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The Securitisation of Migration and Refugee Women

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B.Laws(Hons.), B.A(Criminal Justice and Criminology)(Hons.),
M.A(International Humanitarian Action)

Submitted in fulfilment of the requirements for the Degree of Doctor of Philosophy

Department of Criminology, Monash University

8 February 2012

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<tr>
<td>AFM</td>
<td>Armed Forces of Malta</td>
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<tr>
<td>AMISOM</td>
<td>African Union Mission in Somalia</td>
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<td>AVR</td>
<td>Assisted Voluntary Return</td>
</tr>
<tr>
<td>AWAS</td>
<td>Government Agency for the Welfare of Asylum Seekers</td>
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<tr>
<td>ECHO</td>
<td>European Commission’s Humanitarian and Civil Protection Aid Department</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUREMA</td>
<td>EU Relocation Program Malta</td>
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<tr>
<td>FRONTEX</td>
<td>The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union</td>
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<tr>
<td>HRW</td>
<td>Human Rights Watch</td>
</tr>
<tr>
<td>ICU</td>
<td>Islamic Courts Union</td>
</tr>
<tr>
<td>IDP</td>
<td>Internally Displaced Person</td>
</tr>
<tr>
<td>IOM</td>
<td>International Organisation for Migration</td>
</tr>
<tr>
<td>JRS</td>
<td>Jesuit Refugee Service</td>
</tr>
<tr>
<td>MSF</td>
<td>Medicins Sans Frontières</td>
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<tr>
<td>MUHREC</td>
<td>Monash University Human Research Ethics Committee</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organisation</td>
</tr>
<tr>
<td>OAU</td>
<td>Organisation for African Unity</td>
</tr>
<tr>
<td>OCHA</td>
<td>Organisation for the Coordination of Humanitarian Affairs</td>
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<tr>
<td>PTSD</td>
<td>Post-Traumatic Stress Disorder</td>
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<tr>
<td>RRP</td>
<td>Regional Protection Programme</td>
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<tr>
<td>TFG</td>
<td>Transitional Federal Government</td>
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<tr>
<td>THP</td>
<td>Temporary Humanitarian Protection</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>UNITAF</td>
<td>United Task Force – also known as Operation Restore Hope</td>
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<td>UNOSOM</td>
<td>United Nations Operation in Somalia</td>
</tr>
<tr>
<td>WING</td>
<td>Women, Immigration and Nationality Group</td>
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ABSTRACT

This research contributes a gendered analysis of the securitisation of migration by focusing on women’s experiences of irregular migration. The Central Mediterranean European Union Member State of Malta finds itself on the frontline of policing and securing Europe’s southern external borders against transnational migrant subjects (Gil-Bazo 2006; Klepp 2010). Through qualitative interviews with refugee women in Malta, and members of law enforcement agencies and representatives of non-government organisations operating in the Maltese context, this thesis seeks to understand how the securitisation of migration impacts upon women’s experiences across four key stages of migration – exit, transit, arrival and onward migration. Malta is the geographical site at which the four stages of the border crossing process are examined.

The securitisation of migration, underpinned by familiar criminal justice practices of deterrence, punishment and risk-reduction as examined here conflicts with the central tenets of refugee protection. This thesis explores the gendered dimensions of the tensions between these two legal frameworks and how they relate to women’s experiences of crossing international borders from Somalia into Malta to seek refugee protection. Women’s agency and resilience are enacted within frames of violence, punishment, containment and control. The securitisation of migration influences complex decision-making at each stage along the migratory path, produces layered and gendered vulnerabilities, and can culminate in the deteriorating mental and physical health of refugee women, particularly at the stage of arrival in Malta. This research contributes a micro account of the securitisation of migration to refocus the debate on the everyday life experiences of those most directly affected by this restrictive apparatus – transnational migrant subjects.
DECLARATION

This thesis contains no material which has been accepted for the award of any other degree of diploma in any University or other institution and to the best of the candidate’s knowledge, it contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

Signed:

Date:
ACKNOWLEDGEMENTS

Many hands have made light-ish work of this project. The research was made possible by the co-operation of many people in Malta. It was a privilege to hear the stories of women who have journeyed to the EU and a real challenge to make the most of the data in honour of those who participated. Thank you to the women participants and to the NGO and law enforcement participants who contributed and the other ‘fixers’ who supported and facilitated this research. I’m particularly grateful for the support of Maria Pisani, Daniella Grech and Terry Gosden who made fieldwork fun and were inspiring social change agents.

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A highlight for 2011 was joining a writing group and becoming friends with Tebeje Mekonnen and Kiran Pienaar through Monash PSI’s Advanced Studies Institute. Two individuals that shaped my writing, ideas and kept me motivated and close to the data.

Mum and Dad, this one’s for you. Thanks for an appreciation of the value of education, activism and social justice. You both continue to offer support at every turn and I’m very grateful for your role in getting this project across the line. Ian and Amy, thanks for making sure sanity remained a key goal in finishing this project and for always being interested. And for providing a tropical location as valuable down time.
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CHAPTER 1: INTRODUCTION

The doctoral research presented here is based on the everyday experiences of women who cross international borders to seek refugee protection. There is a considerable gap in the existing criminological literature in relation to the use of empirical research to capture the lived experience of those seeking refugee protection. The need to fill this gap is particularly pressing in light of the recent upheaval in refugee protection resulting from the discourses, policies and practices of the ‘securitisation of migration’ (Huysmans 2000, 2006). This thesis contributes a gendered analysis of this phenomenon.

The key concepts explored in this thesis are the securitisation of migration, and the relationships between gender and irregular migration, and between gender and refugee protection. In the contemporary period, scholars have documented how the act of crossing borders has become greatly differentiated, particularly according to race, class and gender (Aas 2011; Wonders 2006, 2007; Balibar 2002; Khosravi 2010; Weber 2006; Pickering 2011). Borders, primarily those around the Global North (Richmond 1994), have undergone significant transformations, with securitisation now the dominant paradigm (Bigo 2002; Guild 2005; Huysmans 2000, 2006).

While existing scholarship has primarily focused on the legal aspects of applying for refugee status and the success or otherwise of claims of gender-related persecution, in this research I have ventured beyond the narrow confines of a tribunal or courtroom. Basing myself in Malta, a Member State on the European Union (EU)’s southern edge, I spoke with refugee women about their experiences across four key stages of their migratory journey – exit, transit, arrival and onward migration. This research strengthens existing criminological literature by placing women’s experiences at the centre of the inquiry and by generating empirical data. The research objective is not to universalise or generalise the accounts presented here to reflect all refugee women’s experiences across the globe (Crawley 2001, Mohanty 2003). Rather, this is a focused qualitative study that stands to contribute to understandings of securitisation and refugee protection, and of their gendered impact, operating at both the micro and macro levels.

The literature on gender and irregular migration, the securitisation of migration, and gender and refugee protection informs the central research question of this thesis: what is the impact of the securitisation of migration on women’s experiences across the four key stages of migration – exit, transit, arrival and onward migration? The identification of this journey as comprising four key stages should not be taken to suggest that the migration process is linear (Düvell 2010). Rather, when I talked to women about their experiences it became apparent that each stage bears a separate, albeit interdependent, relationship with the migratory journey. The methodology deployed in this thesis is set out in Chapter 2. Over three years and three visits to Malta between 2009 and 2011, 26 qualitative interviews were conducted with Somali refugee
women residing in Malta. To further contextualise the inquiry, qualitative interviews were also conducted with two members of law enforcement agencies and two representatives of non-government organisations (NGOs) operating in the Maltese context.

I draw on the gender and irregular migration literature in Chapter 3 to locate this study of global mobility. This body of literature has steadily expanded since the 1990s (Anderson & Ruhs 2010; Bloch & Chimienti 2011) and traces the conventional binary categorisations that have come to define mobility – legal and illegal, regular and irregular – which reinforce perceptions of the sovereign’s ability and right to control migration. Chapter 3 also explains the terminology I use to talk about those who cross borders extra-legal, specifically my choice of the term ‘transnational migrant subject’ (Kapur 2005). Chapter 3 concludes by introducing Malta as the case study for this research. Malta was selected as the location in which to base this study as it receives the highest number of applicants for asylum per head of population in the EU, and the number of those it recognises as applicants for humanitarian protection is also among the highest (Hammarberg 2011).

The ‘securitisation of migration’ (Huysmans 2000, 2006) is a key concept informing this research and forms the basis of the theoretical framework set out in Chapter 4. This chapter examines how refugees are frequently placed on the same security continuum alongside not only illegal migrants but also drug traffickers and terrorists. Various theoretical frameworks have been advanced to understand transformations in sovereign power expressed through reinvigorated efforts to include and exclude transnational migrant subjects (Bosworth & Guild 2008; Huysmans 2000, 2006; Oelgemöller 2011; Pickering 2005, 2011; Weber 2006; Wonders 2006, 2007). I organise this extensive body of literature into a frame of discourses, policies and practices of the ‘securitisation of migration’ (Huysmans 2000, 2006). Huysmans (2006: 64) sets out three themes that he argues are part of this ‘multidimensional process’ of securitising migration – internal security, cultural identity and the crises of the welfare state (Huysmans 2006: 64). These themes are explored alongside relevant concepts in the existing literature that address the transformation of traditional notions of ‘the border’. Chapter 4 conceptually identifies the elements of the securitisation of migration that coalesce to produce dynamic but familiar criminal justice responses – punishment, deterrence and risk reduction. Transnational migrant subjects are criminalised and punished through such practices as mandatory detention. Discourses, policies and practices of deterrence and punishment have produced increased exposure to risk and harm for transnational migrants at various ‘migratory fault lines’ (Grant 2011) around the globe (Weber and Pickering 2011).

Conceptually and analytically it was seen as important to highlight the key tensions between legal frameworks of refugee protection and the securitisation of migration, before discussing the empirical data on which this thesis is primarily based. This analysis, which is set out in Chapter
begins with a gendered analysis of refugee protection before turning to examine five main areas of tension. The gendered dimensions of each of these areas of tension are identified and form the key conceptual research sub-questions that directly relate to each migratory stage, and hence each analysis chapter.

The first question I ask is: if refugee protection is premised on crossing international borders, what is the gendered impact of regimes of non-entrée on those who seek entry for the purpose of claiming such protection? This question is primarily examined in Chapter 6, which seeks to document and analyse women’s experiences of exiting Somalia. A conflict analysis of Somalia is followed by an examination of how gender-based violence influences women’s decisions to exit. Speaking to women about their experience of exit provided insight into the complex decision-making processes behind leaving Somalia – such decisions are layered and influenced by a range of interdependent factors and actors. Women also spoke of their expectations of Europe and the journey to Europe that lay before them. None of the participants spoke about visas and passports, which I argue attests to the misplaced emphasis, by legislators and policy-makers, on these methods as legal pathways to enter the EU.

Second, Chapter 7 seeks to answer the question of how the drive to warehouse asylum seekers and refugees in their country or region of origin impacts on women’s experiences, particularly in terms of access to and experiences of asylum. Women’s experiences of transit, defined geographically in this research as the area between Somalia and Malta, are the subject of Chapter 7. The women’s narratives reflect the influence of EU migration policies on the South–North migratory routes that have gradually built up over the past decade. Northern Africa has become a concrete focus of securitisation efforts, with considerable funds dedicated to stopping irregular migration through bilateral agreements (Green 2006; Klepp 2010). Refugee women spoke of the factors that make experiences of transit highly variable and influence their journey through Ethiopia, Sudan and Libya to conclude with the dangerous ocean crossing to Malta. These experiences are broadly characterised by direct and structural violence, continuing insecurity and a lack of access to socio-legal or refugee protection. The participants talked about the drivers of such harm, and the contexts in which this direct and structural violence occurs.

Third, refugee protection traditionally guarantees access to certain rights and entitlements, yet policies of deterrence are given effect by diluting access to legal and administrative, and social and economic rights. Thus, the relevant sub-questions here are: What are the ramifications of policies of deterrence for those who subsist on reduced access to rights and entitlements, and what are some of the gendered ramifications of restricting women’s access to legal, social and economic rights? These sub-questions are addressed in Chapter 8. It is argued that punishment for ‘crimes of arrival’ (Webber 1996) explicitly and implicitly shapes women’s experiences of life in Malta upon arrival. Chapter 8 examines how punishment is gendered and manifests in three
spheres – social, legal and administrative, and economic. In analysing the pervasiveness of the punishment paradigm enacted upon arrival, Chapter 8 also addresses the fourth sub-question: how can mandatory detention be reconciled with a refugee protection framework that prescribes non-penalisation for illegal entry, and how do women experience this tension?

The final sub-question relates to the prohibition on refoulement. The securitisation of migration has reduced opportunities to apply for asylum and increased instances of expedited review, raising the prospect of refoulement – a key prohibition of the Convention Relating to the Status of Refugees, July 28, 1951 (‘1951 Refugee Convention’). Therefore, the sub-question addressed by Chapter 9 is: what is the gendered impact of limiting access to asylum to the country of first arrival in the EU? Chapter 9 examines women’s experiences of onward migration, defined as pathways to exit Malta. The securitisation of migration plays a key role in transforming Malta into a borderland for asylum seekers or those with refugee protection wanting to exit Malta. A process of selective and targeted ‘rebordering’ takes place on Malta, which either propels irregular migrants to travel to other countries or confines them to the island, in which case the only option is to remain in indefinite limbo or to find illicit means of exit.

The processes underpinning the securitisation of migration seek to bury the humanised account of policies aimed at punishing people for and deterring them from arriving in the EU outside the increasingly narrow legal migration pathways. They situate at the periphery the motivations of the men and women who try to enter the EU extra-legally. This study challenges the marginalisation of transnational migrant subjects by centring the experiences of women, and in so doing poses normative questions about how the ‘Area of Security, Freedom and Justice’ to which the EU lays claim is experienced by refugee women.
CHAPTER 2: ‘HANGING OUT’ WITH SOMALI REFUGEE WOMEN IN MALTA

To understand the impact of securitisation of migration processes on refugee women’s experiences across the four key stages of their journey – exit, transit, arrival in Malta and onward migration – I conducted a cross-sectional analysis by ‘hanging out’ (Rodgers 2004) with refugee women. ‘Hanging out’ involved a mixed-method, qualitative approach using semi-structured interviews with refugee women and, NGO and law enforcement representatives. In order to build trust and improve the quality of the data obtained from the interviews, I also utilised observational methods – spending time with the women sharing what became known as ‘documented conversations’. This research was conducted over three visits to Malta during 2009–11.

Asylum seekers are immediately recognisable as a potentially vulnerable population. Many have experienced trauma, whether psychological, physical or emotional (Mackenzie, McDowell, & Pittaway 2007). Moreover, the presence of asylum seekers in Malta, as in other EU Member States and countries outside the EU (Cohen 2003; Pickering 2011), is a politically charged and volatile issue (Mackenzie et al. 2007). These factors give rise to important ethical and methodological considerations in conducting research in this area. First and foremost, there is a need to create an interviewing environment that observes ethical safeguards and builds in support and referral mechanisms for participants. Second, in designing the methodology it is important to conduct a contextual inquiry that reflects a multi-level analysis. Third, in designing and interpreting the discussions, it is important to be attentive to the participants’ agency and vulnerability. Finally, in writing up the results, there is a need to acknowledge heterogeneity in participant responses and to endeavour not to homogenise or universalise the experiences of women.

This chapter will elaborate on the epistemological approach adopted in this study and present the rationale for its deployment. It will discuss the current debates around the appropriate methodology for conducting research on irregular migration, and outline where this thesis sits within those debates. This chapter will contend that localised qualitative studies with women are important for generating knowledge about the impact of macro factors as regards irregular migration – namely, the discourses, policies and practices of the securitisation of migration.

RATIONALE FOR THIS RESEARCH

Conducting research on irregular migration carries with it a heightened obligation to give proper regard to ethical and methodological issues. This obligation is more pronounced in light of what we already know about the compromised access of irregular migrants to rights and entitlements, in this case within the EU; the difficult conditions they face (Bloch & Chimienti 2011; Cohen 2003; Guild 2005; Khosravi 2010; McAdam 2005; Melossi 2003); and the media representation of
asylum seekers and refugees, which tends to oscillate between binary opposites of criminal/bogus and helpless victim (Anderson and Ruhs 2010). In this regard, Turton (1996) persuasively argues that if one is going to carry out research into migrant and refugee suffering, one active purpose must be to alleviate that suffering. This was certainly a guiding motivation in conducting the present research and in selecting Malta as the case study site. At the time, few researchers were examining the situation of asylum seekers in Malta and the conditions to which they are subject.

Mackenzie, McDowell and Pittaway (2007) argue that researchers ought to move beyond a ‘do no harm’ approach (Anderson 1999) and towards embracing mutually beneficial research projects, whereby there are reciprocal benefits for participants and/or communities (Mackenzie et al. 2007). It was decided that a mutually beneficial arrangement could best be achieved in this project by documenting and analysing the experiences of refugee women in Malta who are subject to the policies of deterrence pursued by the Government of Malta. It was strongly felt that any other projection of mutual benefit would be unrealistic in the circumstances, and that any other expectations ought not to be conveyed to participants. While it might be possible to continue working on behalf of the ‘imagined community’ of refugee women (Harrell-Bond & Voutira 2007), financial and practical constraints on resources limited this thesis to documenting and analysing women’s experiences. It was felt that to promise anything else is idealistic and raises the expectations of participants, who are in a difficult and vulnerable situation. Rather, this research makes a contribution by collecting and analysing empirical data to identify the issues and understand the challenges facing this population of women.

The reasons for selecting Malta are explored in more depth in the next chapter but are introduced here. First, at the time it was selected, the country was receiving an increasing number of female migrants arriving by boat and seeking asylum. Second, one of the official languages of Malta is English, my native language. Finally, as part of the EU since 2004, Malta is obliged to apply the common European asylum procedures. These procedures have been developed largely over the past decade and their impact on women has received limited academic attention. This is particularly true of the Dublin II Regulation, which prevents onward migration by restricting asylum applications to the country of entry into the EU. This regulation thus places great emphasis on the countries at the EU border, like Malta. While the literature reflects perspectives from other Member States on the southern border, such as Italy (Andreas 2003; Melossi 2003) and Spain (Calavita 2003), little academic attention has been paid to the Maltese context.

While the next chapter will explore why I have adopted a gendered lens to analyse the impact of the securitisation of migration, it is important to highlight as part of the rationale the focus on refugee women adopted here. To better understand women’s experiences of asylum in Malta, I
chose to focus on refugee women – those who have been recognised as in need of some form of humanitarian protection, whether subsidiary, temporary or refugee status based on the 1951 Refugee Convention. I broadened this definition subsequently to include women who self-identify as refugees. This broadening occurred for several reasons. First, it was felt that asking people about their specific migration status was confronting and reinforced divisions and power relations between myself, as an Australian with legal status in Malta, and the participants. Second, the importance of the official recognition of people as refugees became diminished, given what I learned about the diluted and haphazard nature of refugee determination processes in Malta. Many of the women had been refused refugee status in Malta but had simultaneously been awarded refugee status by the US Department of State and been accepted for resettlement. Moreover, recognition of the refugee status of some women had been delayed because they had travelled to other parts of Europe and had been sent back by operation of the Dublin II Regulation. Some women had been refused refugee status but were appealing the decision for a first, second or even third time, and their status could rapidly change into formal, recognised legal status. Finally, people do not imagine themselves in immigration categories (Mountz 2010), yet such categories are often imposed upon them; and I did not want to exacerbate this dynamic by rigidly adhering to such categories.

**QUALITATIVE AND QUANTITATIVE APPROACHES EMPLOYED IN THIS THESIS**

As stated in Chapter 1, a research question and a series of sub-questions comprise the focus of this inquiry. The research question is as follows:

**What is the impact of the securitisation of migration on women’s experiences across the four key stages of migration: exit, transit, arrival and onward migration?**

Following a socio-legal analysis of the tensions between the legal frameworks of the securitisation of migration and refugee protection, a number of sub-questions were generated that relate to each of the analysis chapters.

**Research sub-questions:**

1. If refugee protection is premised on crossing international borders, what is the gendered impact of regimes of non-entrée on those who seek entry for the purpose of claiming such protection?

2. How does the drive to warehouse asylum seekers and refugees in their country or region of origin impact on women’s experiences, particularly in terms of access to and experiences of asylum?
3. What are the ramifications of deterrent policies for those who subsist on reduced access to rights and entitlements, and what are some of the gendered ramifications of restricting women’s access to legal, social and economic rights?

4. How can mandatory detention be reconciled with a refugee protection framework that prescribes non-penalisation for illegal entry, and how do women experience this tension?

5. What is the gendered impact of limiting access to asylum to the country of first arrival in the EU?

To answer the research question and sub-questions posed above this study prioritised a qualitative approach while simultaneously utilising a combination of quantitative, ethnographic and case study methods. Data collection was undertaken using unstructured conversations, or what I term ‘documented conversations’. This open-ended qualitative method was better placed to build rapport with and draw out the stories of transnational migrant subjects and their daily lived experience of arriving and living in Malta. This qualitative method was deemed appropriate for its ability to unpack issues from exit to onward migration and to capture women’s experiences. Qualitative methods are suited to fostering a narrative and developing a contextual understanding of participants’ experiences (Silverman 2000). Some scholars argue that in migration research involving women, qualitative methods have specific strengths. Kofman, Phizacklea et al. (2000: 14) write:

Qualitative data often provides a holistic view of women’s experiences. These sources have been better able to reveal the different spatio-temporal dimensions of female migration, the multiplicity of causes for their moves and the often overlapping strategies used by women migrants. It provides a flavour of the heterogeneity of migration, the range of ages at which people migrate, the varying skills they bring with them, the different reasons for moving, and for staying or moving again, the social relations that facilitate migration and the regimes that influence migrant trajectories. They also highlight the significance of gender as a key variable in the experience of migration.

In short, qualitative methods guard against the homogenisation of experience and ensure interdependent factors and dynamics are more easily recognisable. They also bring to the surface the relations that influence intersections of gender, race and class. Support for taking a qualitative approach to this topic has also been provided by feminist geographers (See Silvey and Lawson 1999, Kofman and England 1997 and Lawson 1999 in Nolin 2006: 38). In summary, a gendered analysis in migration research is best informed by ‘culturally and historically embedded qualitative research that focuses on agency, power relations and dynamics of decision-making at the individual and family level’ (Nolin 2006: 38).
Qualitative methods are a preferred format for exploring attitudes, particularly when dealing with sensitive topics, as was the case in the present research. Unstructured ‘documented conversations’ were adopted here as they fostered flexible engagement with the subject matter and were useful in this setting as English was not the first language of the women participants (May 2001; Riessman 1993). This approach also minimised the potential for the hazard common to structured or semi-structured interview formats of participants providing ‘socially desirable’ responses (Fontana & Frey 2003: 69).

However, the use of qualitative methods in irregular migration research has been criticised by Jacobsen and Landau (2003: 4) who argue that qualitative approaches are too localised and cannot be used to identify global patterns. They advocate for ‘data sets’ generated from statistically representative samples, which includes establishing ‘control groups’ and ‘construct validity’. In putting this argument, Jacobsen and Landau conducted a content analysis of the methodologies deployed in research published in the *Journal for Refugee Studies* in Volume 15 of 2002. They concluded that the majority were poorly designed and that research on refugees needs to become more objective, scientific and quantitative, or else lack credibility.

Alternatively, Rodgers (2004) argues that smaller qualitative studies are important, and further that Jacobsen and Landau’s viewpoint is based on a number of problematic assumptions. The first is the assumption that researchers can specifically identify the relevant research questions to be asked of each sample. In this dynamic area of research, however, this can rarely be the case. Their second assumption is that ‘the lives of refugees and internally displaced persons (IDPs) are a largely irrelevant concern to researchers and aid organisations beyond the extent to which selected aspects may be recognised, measured and controlled as important “variables”’ (2004: 48). This assumption narrows the basis and utility of research with transnational migrant subjects. Third is the assumption that the production of knowledge through quantitative techniques is superior and more ethical than ‘subjectively informed and inductively-derived “guesses” that are characteristic of more qualitative understandings’ (2004: 48). Finally, Rodgers is critical of Jacobsen and Landau’s impractical approach to conducting this type of research using scientific representative data sets.

Rodgers argues that, taken collectively, these assumptions are misplaced in the chaotic environments typical of irregular migration. As a result, researchers who rely on these more scientific, ‘objective’ methods will miss a great deal (2004: 48):

Attempts to make sense of their predicaments through the imposition of neatly – even perfectly – designed surveys may completely miss this defining aspect of the social experience of forced migration and systemic order that is beyond the experiences of the people most affected.
My experience as a researcher talking to asylum seekers in Malta resonates with the above description offered by Rodgers. I agree with his conclusions that measuring problems through quantitative research stands to obscure their underlying causes and potentially give weight to technical interventions that may only address surface-level symptoms. Quantitative research may be able to address questions around ‘what’ is happening, but can very rarely elaborate on ‘why’. As a result I have posed exploratory research questions and fostered reflexivity and flexibility in conducting my field work. I concur with Rodgers cautioning that, ‘[c]aught up in the language of science, knowledge of forced migration remains within the domain of the powerful interest groups that respond to it’ (2004: 48). Dispersing this power necessitates making room for a range of methods and recognising the merits of qualitative approaches.

`HANGING OUT’ WITH REFUGEE WOMEN

The approach described here as ‘hanging out’ stands to produce a form of knowledge that consciously circumvents the cool, objective scientific methods of quantitative research (Rodgers 2004). Rodgers defines hanging out as interpersonal and informal encounters, which he says bring several benefits. First, he argues that this method maintains an emphasis on listening to voices without ‘claiming definitely to represent them’ (2004: 49). Second, Rodgers asserts that hanging out fosters a better understanding of the complexity of forced migration. Third, he refutes the rejection of knowledge as too localised. Rather, he contends that placing emphasis on the local opens up space for configuring the ‘problem’ of forced migration. Finally, hanging out injects a degree of humanism into research, which Rodgers argues is essential to conducting ethical, reflexive and accountable research. He writes (2004: 49):

`Local-level studies conducted on the basis of ‘hanging out’ do not necessarily overemphasise local cultural life, as Castles, Jacobsen and Landau seem to think. Indeed, ‘hanging out’ may reveal, perhaps disturbingly, how political struggles of everyday life are linked to relationships and processes of global significance. Experiences of race and racism and debates over the meanings of globalised concepts such as human rights, gender and Islam, for example, are found in specific local contexts. Localised perspectives also facilitate important critical commentary on the politics of aid, which more scientific studies tend to exclude from the objects of their analysis.

There is much to gain from adopting localised qualitative methods, as Rodgers makes clear; and such a method forms the basis for the use of ‘documented conversations’ to collect data in this research. These methods are well placed to contribute to macro-level analysis by recognising and incorporating the authority of lived experience.
Quantitative methods were also used in this research to complement the qualitative emphasis. Kofman, Phizacklea et al. (2000) argue that such methods do have their place in migration research. Quantitative methods are useful for ascertaining the numerical composition of women in the migration population. They fall short, however, in relation to providing a context for women’s experiences. Thus, quantitative methods must be used with awareness. There is a long history in irregular migration research of data being subject to manipulation in the past by governments and the media in particular (Düvell, Triandafyllidou, & Vollmer 2010: 235). In relation to understanding women’s migration, quantitative methods are notoriously unreliable. Gender-disaggregated data remains difficult to find and in many cases the data exists but is not published (Kofman, Phizacklea, Raghuram, & Sales 2000). In the EU this breakdown is now mandatory, but the quality of gender-disaggregated data still varies considerably. This study utilises quantitative methods to contribute to an overall context, using statistics collected by the Office of the Refugee Commissioner for assessing trends in asylum in Malta.

Ethnography is an increasingly popular method within irregular migration research (Khosravi 2010; Mountz 2010). Although informal observation was carried out in the present study, a formal ethnography was not conducted for three reasons. First, the precarious legal status of the women I interviewed meant that continuity of access to this population could not be guaranteed. Second, it would not have been possible to immerse myself in the life of asylum seekers in Malta for financial and other resourcing reasons. Third, and related to the first point above, conducting research in Malta involved a constantly shifting ground in terms of negotiating and gaining access to the women refugees. For example, as the individuals occupying various roles of authority changed, access to the women shifted or even closed altogether. In summary, however, this research utilised a variety of methods including qualitative, quantitative and observational methods, which can be perceived as a strength (May 2001).

GUIDING ETHICAL AND METHODOLOGICAL CONSIDERATIONS FOR THE RESEARCHER

In conducting this research on irregular migration, the growth of current scholarship on methodology proved instructive. This section outlines the main ethical and methodological considerations guiding this thesis.

RECOGNISING VULNERABILITY AND AGENCY

Working with a population that is widely understood to be ‘vulnerable’ places a critical onus on the researcher to plan the approach carefully in order to avoid any exacerbation of that vulnerability (Mackenzie, McDowell et al. 2007). This need has been referred to by Anderson (1999) as the principle of ‘do no harm’ and has many connotations in this research. Safeguards
such as ensuring informed consent is received, experiences are not homogenised, contextual and structural analysis is sought, and research is transparent and maintains the confidentiality of participants are all constitutive of methodological measures aimed at addressing participant vulnerability (Hugman, Bartolomei, & Pittaway 2011; Mackenzie et al. 2007).

In examining vulnerability in the context of refugee experiences, it is also important to recognise agency. Castles (2002) writes that historically little attention has been paid to human agency in migration studies. However, this is gradually changing (Mountz 2010; Khosravi 2010; McDowell & Wonders 2009; Pickering 2011). Anderson and Ruhs (2010) underscore the importance of embarking upon structural analysis – by considering labour market regulation and segmentation, for example – in conjunction with a focus on individual agency in research on irregular migration. They cogently argue that unless you address the resistance and coping mechanisms adopted by subjects, you will be oversimplifying the perception of irregular migrants as either ‘victims’ of exploitation or ‘villains’ who break the law (Anderson and Ruhs 2010: 177). This is a critical prism through which this research has been undertaken. As a researcher, I need to work to ensure that the balance between structural analysis, vulnerability and agency is consistently represented so as to avoid the pitfalls of binaries that echo the dominant approach of the state, which homogenises transnational migrant subjects and casts them as law-breakers.

THE POLITICS OF RESEARCH – A MULTI-LEVEL ANALYSIS

Employing a multi-level analysis assists in establishing contextually grounded research (Mohanty 2003). The value of such an approach in irregular migration research is well established (Anderson & Ruhs 2010; Bloch & Chimienti 2011: 9; Koser 2006). Bloch and Chimienti (2011: 9) argue:

To provide a sensitive understanding of irregular migration, scholars need to combine a multilevel analysis, exploring irregular migrants’ lived experiences, their interpretations and subjective experiences and their social and structural context, necessitating theoretically informed empirical studies.

In this thesis, when the impact of structural factors like the processes of securitisation are tested, a multi-level analysis is critical. The micro-level focuses on people and their agency, experiences, concerns and resistance to institutional norms. This can then be fed into a macro-level analysis.

A multi-level analysis is not blinded by a narrow focus on the interests of the elite. Cohen (2003) has written about the importance of taking apart the mechanisms of authority informing state-centred and media discourses. He argues emphatically that only after doing so can we effectively understand the operation of socio-cultural forces within society. The importance of not being
bound by the state’s dominant views is central to critical criminology. For a long time, criminology has reified the state system by focusing its lens on matters inside the state boundaries (Green and Ward 2000). In this regard, this thesis focuses on both structural issues and the disaggregated accounts provided by individuals. By adopting this prism, research is best placed to disrupt the statist assumptions and premises on which securitisation of migration processes are based.

In the context of multi-level analysis, another important connotation of the ‘do no harm’ principle is the researcher’s duty to avoid perpetuating or fuelling existing cycles of violence (Galtung 2010). Black (2003: 45) advocates that researchers in the field of irregular migration be cognisant that results may be used to further state interests (Black 2003: 45). For this reason Black argues that there should be minimal emphasis on how illegal migration occurs (such as details of routes and costs), and a greater focus placed on why it occurs (2003: 47). Galtung (2010) also encourages researchers to be mindful that research can inadvertently support cycles of violence. It is precisely to address this problem that the term ‘illegal migrant’ is not used in this research, and that ‘transnational migrant subject’ is used instead, as set out in the next chapter, to avoid perpetuating the criminalisation of asylum seekers and refugees.

**AVOIDING BINARIES AND ESSENTIALISATION OF WOMEN’S EXPERIENCES**

The hazards of conceptual binaries have been the focus of postcolonial scholars for many decades (Mohanty 2003; Mohanty, Russo, & Torres 1991; Spivak 1987), and a consideration of postcolonial scholarship is especially relevant to this research. In particular, feminist methodology is alert to criticisms by postcolonial scholars of universalising women’s experiences and labelling groups of women as oppressed. The ‘sisterhood is global’ movement of the early 1980s (Morgan 1984), has given way to a more critical analysis of the heterogeneity of women’s experiences and the divergent priorities within much feminist research that has masqueraded as being on behalf of all women. Spivak wrote that ‘Southern women increasingly maintain that global and Northern-referenced representations of women have little or no relevance to their daily lived experience’ (Spivak 1987 in Indra 1999a: 9).

This critique can be usefully applied to this research to guard against universalising and essentialising the experiences of the women interviewed. This criticism has been levelled at the scholarship on refugee women not only by postcolonial scholars but also by refugee and irregular migrant researchers (Bloch, Galvin, & Harrell-Bond 2000; Chimni 2004; Mountz 2010; Watson 2009; Weber 2005). This instruction alerts me to my own subjectivities and encourages me to be more reflexive. It ensures that I seek to understand issues in context and to be mindful of the history and structures being negotiated. In sum, it is not the objective here to generalise the findings of this research to represent the experiences of all migrant women who have entered
or have sought to enter the EU, or even Malta; nor are they necessarily applicable to other migrant groups.

As this is an academic thesis, however, it is the objective to contribute to a broader narrative on irregular migration. On this point, consideration of the ‘imagined community’ of refugee women ought to be present throughout the research. Harrell-Bond and Voutira write (2007: 292):

> One of the main challenges in this context is determining what is in their best interests collectively. Or, to put it in contemporary terms, what is in the best interests of the ‘imagined community’ of refugees. From the standpoint of the researcher, a major challenge concerns the ability to translate personal narratives into theoretical debates taking place within disciplines.

Talking to women about their experiences is a privilege, and one that carries with it an obligation to listen and respect the voices heard. This thesis aims to honour this privilege by contributing to the broader theoretical debate on the gendered impact of the securitisation of migration and the tensions between this framework and refugee protection, while avoiding the universalising of women’s experiences and maintaining other ethical and methodological safeguards.

**THE ETHICS PROCESS AT MONASH UNIVERSITY**

As a researcher I take ethics seriously and endeavour to uphold the values espoused in the National Statement on Ethical Conduct in Human Research (2007), which is followed by Monash University. This involves giving full consideration to how participants might be affected by and throughout my research. As a Monash University student, however, I was required to obtain approval from the Monash University Human Research Ethics Committee (MUHREC) to conduct this research. The waiting period for obtaining this approval was approximately nine months and involved at least six rounds of amendments and even a further application.

Several aspects of this research were constrained by the MUHREC requirements. First, the requirement to develop in advance a specific set of interview questions inhibited flexibility in conducting the interviews with the transnational migrant subjects. To illustrate, I had to submit a list of interview questions as MUHREC would not accept a schedule of topics. The questions eventually agreed upon are enclosed at Appendix A. This frustrated the procedure as the nature of unstructured qualitative research is such that it is impossible to know in advance every question that might arise. Nevertheless, the interview questions formed the basis of the documented conversations with women participants in this research.

The process followed by the MUHREC assumes that every researcher knows the relevant questions for their target participant group. However, given the complexity of irregular migration and the lack of published research on women’s experiences of irregular migration, it is important
to approach this research area with an open mind and flexible method, as advocated by (Hugman et al. 2011: 15), providing of course that certain boundaries and safeguards are in place. One of those boundaries the MUHREC insisted upon gave rise to the second constraint: that I was not to engage in any discussion about illegal activities. When one’s very existence in a country without a visa is interpreted by the mainstream legal system to be illegal, as was the case for the women participants in this study, this constraint significantly limited the scope of the research material. It was certainly the intention in the present research to follow the guidance of other irregular migration scholars and not to publish the details of any smuggling operations, cognisant that the consequences of such revelations are of primary importance (Düvell et al. 2010; Koser 2010). The constraints imposed by the MUHREC made engagement with the complexity of irregular migration difficult. Moreover, as has been observed by other researchers in similar contexts (Dominelli & Holloway 2008; Hugman et al. 2011; Redwood & Todres 2006), it was apparent that the intent underlying these constraints was focused on protecting the legal interests of the institution rather than on protecting the participants.

Moreover, the requirement to have refugee women sign consent forms as evidence of their informed consent seemed more about protecting Monash University from legal prosecution than about protecting the rights of participants. Consent forms have historically been used in the context of medical research (Mackenzie et al. 2007). In an environment where people are vulnerable and/or in crisis, the requirement to sign consent forms that contain their names and signatories is not conducive to building trust with participants (Mackenzie et al. 2007). Nonetheless, the MUHREC persists in requiring researchers to collect these forms. It would have been far more useful, along the lines outlined by Mackenzie, McDowell et al. (2007), to have some kind of ethical framework that could be discussed and developed collaboratively with the MUHREC (2007: 309). Such a program would enable sufficient flexibility for researchers and ensure that they are not tied down to specific questions that might be irrelevant to the context and frustrate the execution of qualitative research. Qualitative research makes the claim of being able to identify the causes of issues and to listen to participants, in contrast to the rigid objective and scientific quantitative research methods. The value of qualitative research thus needs to be reflected in the ethics process.

THREE PHASES OF RESEARCH IN MALTA

This research was conducted over three visits to Malta from 2009 to 2011, as set out in the timeline below. The first visit was a scoping exercise which occurred when I was a Research Assistant. I spent two weeks in Malta networking with several NGOs and members of law enforcement agencies, and researching archival collections at key libraries. It was decided that a further study would be possible. Indeed, learning more about the conditions in which asylum
seekers were living in Malta provided considerable motivation for returning and conducting an in-depth study of North African women arriving in Malta to seek asylum.

Table 1: Timeline of research 2009–11

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First trip to Malta: scoping</td>
<td>Apply for ethics approval</td>
<td>Second visit to Malta: archival and networking</td>
<td>Ethics approval received</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Third visit to Malta: interviews</td>
</tr>
</tbody>
</table>

The second visit occurred in October 2010 and lasted for approximately four weeks. Again, this was a scoping and networking exercise which also involved considerable documentary research perusing archival material on EU asylum procedure and law as applied in Malta. It also provided an opportunity to network with other researchers at the University of Malta and consult other researchers and social workers on the types of questions and topics I was seeking to cover, and specifically their appropriateness. During this visit I made contact with several Somali ‘cultural mediators’ working for the Government of Malta and with the international NGO Médicins Sans Frontières. These cultural mediators assisted me in determining the cultural appropriateness of questions and advice on accessing asylum seeker populations.

The third and final visit took place in March and April 2011. Over the course of one month I conducted interviews with 26 women who identified as refugees in Malta, using qualitative methods aimed at drawing out women’s daily lived experience following their arrival in Malta.

ACCESS

‘[T]he challenge for the researchers is to identify and bypass the obstacles that stand between them and the refugees.’ (Harrell-Bond & Voutira 2007: 295)

In the literature on migration, accessing asylum seeker populations is understood to be a very difficult task (Harrell-Bond & Voutira 2007). Harrell-Bond and Voutira write that access can be obstructed, hindered or granted by both NGOs and government organisations. Moreover, accessing asylum seeker populations in the EU has become increasingly difficult as a result of the heightened use of detention and the barriers to visitation in detention centres. Harrell-Bond
and Voutira apply Foucauldian notions to argue that ‘arbitrary denial of access becomes part of the exercise and wielding of power’ (Foucault 1977: 186 in Harrell-Bond and Voutira 2007: 283). Similarly, the increased propensity to deport asylum seekers has made it difficult to meet with asylum seekers even if access to them in detention is granted. The expanded use of offshore processing centres will only exacerbate access issues (Harrell-Bond & Voutira 2007). Harrell-Bond and Voutira forecast that this may mean only ‘integrated’ refugees will be accessible for interview in the future. In this research I was also unable to visit people in detention. However, I was able to negotiate access to two Open Centres in Malta with the express permission of the heads of the organisations that managed those centres. Centre Managers were not able to give this permission.

I obtained this access by two key means. First, after networking with a local NGO, agreement was sought and obtained to place an A4 poster on a noticeboard within the organisation frequented by many asylum seekers. This approach was intended to avoid the potential bias that can result when the NGO itself selects the interview participants on the researcher’s behalf (Harrell-Bond & Voutira 2007; Mackenzie et al. 2007: 309). Six women responded to the advertisement and the ‘snowballing’ technique was used thereafter to generate the further 20 interviews with refugee women. A sum of 20 Euros was paid to each of the participants as compensation for their time and/or travel. The majority of the interviews were carried out at the Open Centres – the place of residence of the refugee woman. Two interviews were conducted at a public library.

All interviews were conducted in English and on a one-to-one basis. The interviews lasted from 20 minutes to two hours, some over the course of a day, others over a few weeks. The criterion that interviewees must have a reasonable level of English may have meant that those who were interviewed were more educated. It may also have meant that they had resided in Malta for longer periods, or were employed in Malta and were therefore learning English. The only other criteria were that the participants were over 18 years of age, had been in Malta for more than six months, and identified as refugees. This was explained after I had set out the purpose of the interview and talked through the explanatory memorandum. I also explained that I had a referral list of counselling services should any issue arise, and that they could terminate the interview at any time or choose not to talk about any issue. After informed consent had been received, the discussions began. These interviews were audio-taped if the participant agreed, and transcribed or written up from notes. This data was then coded using Nvivo software, according to key themes as were identified.

Immediately identifiable was that each stage – exit, transit, arrival and onward migration – constituted a separate phase for the women interviewed, and all were correspondingly separated into themes. Data was coded according to each of these themes and then according to a series
of sub-themes as they emerged. For the theme of ‘exit’, the main sub-themes were gender-based violence, the impact of the Somali conflict, expectations of Europe, expectations of the journey, ‘policing at a distance’ and decision-making around exit. For the theme of ‘transit’, the sub-themes were gender-based violence, detention, subsistence, and functionally/spatially/temporally mobile and personalised borders. The ‘arrival’ sub-themes consisted of accommodation; health; employment; violence; legal redress; living with dignity; remittances; surveillance; and pregnancy, children and childcare – all in the context of Malta. The ‘onward migration’ sub-themes were the Dublin II Regulation, deportation, assisted voluntary return, being ‘stuck’, family reunification and trafficking.

To further contextualise the research, two representatives from the Maltese Government and two representatives from NGOs operating in Malta were interviewed. The government agencies interviewed were responsible for overseeing migration and border control. The NGOs were responsible for service delivery to and support for refugees in Malta. These participants were initially contacted by email and interviews conducted in person. My criteria for interviewing these participants included that they had worked for the organisation for more than two years and were over the age of 18. This data was coded under the same sub-themes as those listed above. This means that the first two analysis chapters contain minimal empirical data from the NGO and law enforcement participants.

**CHARACTERISTICS OF PARTICIPANTS**

The majority of the women interviewed were from Somalia, with two women from Ethiopia who identified as Somali. All 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. The partners of many of the participants resided in other countries in Europe or in transit countries near their country of origin.

Table 2: Participant profiles – refugee women

<table>
<thead>
<tr>
<th>Participant</th>
<th>Country of origin</th>
<th>Age</th>
<th>Time spent in Malta</th>
<th>Children</th>
<th>Relationship status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pia</td>
<td>Somalia</td>
<td>22</td>
<td>2 and a half years</td>
<td>0</td>
<td>Single</td>
</tr>
<tr>
<td>Nasra</td>
<td>Somalia</td>
<td>48</td>
<td>4 years</td>
<td>4 children in Malta</td>
<td>Married (partner in Ethiopia)</td>
</tr>
<tr>
<td>Sahra</td>
<td>Ethiopia*</td>
<td>28</td>
<td>5 years</td>
<td>1 in Malta (4 yrs)</td>
<td>Single</td>
</tr>
<tr>
<td>Participant</td>
<td>Country of origin</td>
<td>Age</td>
<td>Time spent in Malta</td>
<td>Children</td>
<td>Relationship status</td>
</tr>
<tr>
<td>-------------</td>
<td>------------------</td>
<td>-----</td>
<td>---------------------</td>
<td>----------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Lota</td>
<td>Somalia</td>
<td>28</td>
<td>2 years</td>
<td>3 (all live in Somalia)</td>
<td>Single</td>
</tr>
<tr>
<td>Ayan</td>
<td>Ethiopia*</td>
<td>22</td>
<td>2 years</td>
<td>2 (1 in Malta, the other in Ethiopia)</td>
<td>Married</td>
</tr>
<tr>
<td>Haban</td>
<td>Somalia</td>
<td>29</td>
<td>3 years</td>
<td>4 children in Somalia</td>
<td>Single</td>
</tr>
<tr>
<td>Amina</td>
<td>Somalia</td>
<td>42</td>
<td>18 months</td>
<td>2 Children in Malta</td>
<td>Unknown</td>
</tr>
<tr>
<td>Syrad</td>
<td>Somalia</td>
<td>22</td>
<td>5 years</td>
<td>0</td>
<td>Single</td>
</tr>
<tr>
<td>Asha</td>
<td>Somalia</td>
<td>27</td>
<td>18 months</td>
<td>2</td>
<td>Unknown</td>
</tr>
<tr>
<td>Ladan</td>
<td>Somalia</td>
<td>34</td>
<td>2 years</td>
<td>3</td>
<td>Unknown</td>
</tr>
<tr>
<td>Nadifa</td>
<td>Somalia</td>
<td>28</td>
<td>13 months</td>
<td>0</td>
<td>Unknown</td>
</tr>
<tr>
<td>Miriam</td>
<td>Somalia</td>
<td>23</td>
<td>3 years</td>
<td>2</td>
<td>Unknown</td>
</tr>
<tr>
<td>Ayanna</td>
<td>Somalia</td>
<td>38</td>
<td>3 years</td>
<td>3</td>
<td>Unknown</td>
</tr>
<tr>
<td>Aziza</td>
<td>Somalia</td>
<td>23</td>
<td>4 years</td>
<td>3</td>
<td>Unknown</td>
</tr>
<tr>
<td>Blota</td>
<td>Somalia</td>
<td>25</td>
<td>18 months</td>
<td>2</td>
<td>Unknown</td>
</tr>
<tr>
<td>Hibo</td>
<td>Somalia</td>
<td>33</td>
<td>5 years</td>
<td>2</td>
<td>Unknown</td>
</tr>
<tr>
<td>Leyla</td>
<td>Somalia</td>
<td>24</td>
<td>18 months</td>
<td>0</td>
<td>Unknown</td>
</tr>
<tr>
<td>Nina</td>
<td>Somalia</td>
<td>23</td>
<td>2 years</td>
<td>0</td>
<td>Unknown</td>
</tr>
<tr>
<td>Lamlya</td>
<td>Somalia</td>
<td>28</td>
<td>4 years</td>
<td>2 children</td>
<td>Single</td>
</tr>
<tr>
<td>Kief</td>
<td>Somalia</td>
<td>27</td>
<td>1 year</td>
<td>3 in Malta</td>
<td>Married</td>
</tr>
<tr>
<td>Jawahir</td>
<td>Somalia</td>
<td>38</td>
<td>18 months</td>
<td>2 children both in Malta</td>
<td>Married</td>
</tr>
<tr>
<td>Participant</td>
<td>Country of origin</td>
<td>Age</td>
<td>Time spent in Malta</td>
<td>Children in Malta</td>
<td>Relationship status</td>
</tr>
<tr>
<td>-------------</td>
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</tr>
<tr>
<td>Nelo</td>
<td>Somalia</td>
<td>27</td>
<td>4 years</td>
<td>4 children in Malta</td>
<td>Married (partner in Ethiopia)</td>
</tr>
<tr>
<td>Dina</td>
<td>Somalia</td>
<td>47</td>
<td>4 years</td>
<td>0</td>
<td>Single</td>
</tr>
<tr>
<td>Sena</td>
<td>Somalia</td>
<td>29</td>
<td>18 months</td>
<td>2 children in Ethiopia</td>
<td>Married (partner in Holland)</td>
</tr>
<tr>
<td>Dekha</td>
<td>Somalia</td>
<td>28</td>
<td>2 years</td>
<td>1</td>
<td>Married</td>
</tr>
<tr>
<td>Hanan</td>
<td>Somalia</td>
<td>24</td>
<td>2 years</td>
<td>1 in Malta</td>
<td>Single</td>
</tr>
</tbody>
</table>

*The women from Ethiopia the state, identified as being Somali.

As per my criteria outlined above, the two NGO and two law enforcement representatives had worked in their organisation for longer than two years. One of the NGO participants worked in the delivery of medical services to transnational migrant subjects, the other in the delivery of legal advice and representation. The law enforcement participants were both from government agencies chiefly involved in policing and prosecuting transnational migrant subjects in Malta.

**RISKS TO THE PARTICIPANT AND THE RESEARCHER**

In conducting research with irregular migrants there are several risks to contemplate. Some scholars argue for a two-step process for determining whether research should be undertaken with vulnerable populations (Düvell et al. 2010). Düvell and Triandafyllidou et al. argue that researchers should consider whether the benefits of obtaining the data outweigh the potential harms (2010: 228). In seeking to resolve this question, when conducting any research Düvell and Triandafyllidou et al. survey the potential negative consequences of their research on the participants. In the present study, one possible consequence for the participants was revisiting their trauma when discussing their experiences of past (traumatic) incidents. To address this potential problem I put together a list of counselling referral services in Malta that the participants could access as needed. This contact list is enclosed at Appendix B. I also advised the women participants that they could terminate the interview at any time, or choose to not continue any line of discussion.

Düvell and Triandafyllidou et al. also argue that researchers must select appropriate methods that ensure the transparency of the research and accountability, not only for the participants but also in terms of quality standards – in my case those of Monash University and in particular the
MUHREC – to ensure the data is of the highest quality (2010: 229). I believe I achieved transparency in outlining the approach taken to the recruitment of participants and to obtaining informed consent. I was attentive to maintaining informed consent throughout the interviews in explicitly communicating that the interviewees could terminate the interview at any time. I made sure the participants understood that I was from a university and that this research was for the purpose of obtaining a doctoral qualification. Informed consent was particularly important because during the conduct of the research many women were initially curious as to whether or not I was interviewing people as applicants for resettlement to Australia. Many expressed their knowledge that France and Germany had representatives in Malta who were conducting interviews alongside the International Organisation for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) to take participants away from Malta. I therefore had to ensure that I clearly explained the purpose of the interviews and my affiliation to Monash University, and that the interviews were in no way related to their applications for humanitarian status in Malta, or anywhere else. I had to quell any idea that I was from the Australian Government and make clear my association with Monash University and my studies there. I also had to ensure that participants understood my lack of connection to any resettlement program. Almost all of the women I spoke to said that Australia was ‘good’ when I told them where I was from. Three of the women had relatives in Australia and said that they wanted to go there.

On several occasions my responses and explanations about my role and purpose in being there and wanting to interview women were followed up with further questions about what I could do for the participants. I carefully explained that my role was to listen to their descriptions and views regarding their experiences in Malta, and to convey this to an audience beyond Malta – to act as a mouthpiece for their thoughts on what was good and bad, what was working and not working. In this context, the position of power of the researcher is widely acknowledged (Düvell et al. 2010); I therefore had to be careful in managing the participants’ expectations.

Hugman, Bartolomei et al. (2011) report that a recurring complaint among refugee research participants is that the information they provide to researchers is misused. I understand that negative consequences would follow were I not to observe confidentiality, to represent the women as anonymous throughout my thesis and to remove any identifying information in discussing their experiences. I also understand that stigmatisation could be an issue for these women should their anonymity not be preserved. I therefore only met with women at a place of their choosing where they would feel comfortable talking – most often at their place of residence.

Turning now to the risks to the researcher, in this research it was important to incorporate processes that enabled reflexivity and opportunities to debrief (Davison 2004). I spoke with my supervisor once a week by telephone and emailed her twice a week in relation to any issues that arose. The first visit to Malta was quite a shock so it then became more important to build in
opportunities to debrief; however, this need lessened over the course of the research. By the third visit I had established a network of researchers and migration activists in Malta and elsewhere with whom I could discuss any issues, while still maintaining the confidentiality of the participants.

**LIMITATIONS OF THIS APPROACH**

This section considers the potential criticisms and limitations of the approach adopted in this thesis, as part of a rigorous ‘ethical’ and ‘effective’ research method (Jacobsen & Landau 2003). Jacobsen and Landau (2003: 186) contend that “[e]ffective and ethical research requires that methodologies be sound and explicitly recognise and criticise the limits and strengths of approaches to generating both data and the conclusions drawn from them’. As discussed above, one of the obvious limitations in this research was that I had to rely on participants to have a conversational level of English. This may have limited my sample to those who were more educated or had more experience working in Malta. The sampling strategy I used in focusing on refugee women may have meant that I did not attract as many women travelling in family groups, as women with families may not have visited the NGO where I placed my poster and would also therefore have not been accessed via the snowballing technique subsequently used. Although I learnt however, not to assume that a woman travelling alone did not have a partner, as many of the participants did have partners that were either in Somalia, neighbouring countries to Somalia or other parts of the EU.

In retrospect I think it would have added a useful dimension to be able to conduct a longitudinal study by interviewing the same people or different people from the same target group over a number of years, yet this may not have been possible given the mobile nature of the refugee women interviewed. Being able to conduct ethnography for a longer period of time would have made the data richer. However, both options were beyond the scope of this study as a result of resourcing constraints and the highly mobile and precarious legal status of the women interviewed.

**CONCLUSION**

This research was conducted primarily using an unstructured qualitative approach of ‘documented conversations’ in order to understand women’s experiences and the impact of the processes of the securitisation of migration. A relatively unstructured qualitative approach enabled a more grounded and contextualised analysis, and provided the flexibility to incorporate questions and issues as they arose.

Research on methodology and particularly with irregular migrants, has guided this thesis. Given the importance of avoiding universalising participant experiences and the potential for the
researcher’s own subjectivities to impact the results, this study is based on a multi-level analysis. Due thought is also given to the ethical issues that arose. This thesis makes a contribution to the scholarship on irregular migration and Malta in order that future transnational migrant subjects may have improved experiences of migration and refugee determination processes.
CHAPTER 3: ‘TRANSNATIONAL MIGRANT SUBJECT’ – IRREGULAR MIGRATION, WOMEN AND MALTA

The women I interviewed as part of this research arrived in Malta by boat without legal visas or passports, seeking entry into the EU. They are part of an increasing number of people entering countries of the Central Mediterranean from Sub-Saharan Africa and applying for refugee status (NSO 2009). Of this group, women represent an increasing minority: doubling from 7 per cent in 2005 to 15 per cent in 2008 (JRS 2008; NSO 2010).

In the contemporary world, in which mobility is very much differentiated according to class, gender and ethnicity, among other variables, some border control regimes are dedicated to making immigration controls easier to navigate for privileged non-citizens (Aas 2011: 338). However, those interviewed for this study have experienced the opposite. This chapter situates the study of people who cross borders within the literature on ‘irregular’ migration – literature that has steadily expanded since the 1990s (Anderson & Ruhs 2010; Bloch & Chimienti 2011). It traces the binary categorisations of mobility – legal and illegal, regular and irregular – that reinforce perceptions of the sovereign’s control of migration.

In the study of people who cross borders extra-legally, defining ‘the migrant’ is a process of exclusion or inclusion (Kofman et al. 2000). That the definitions adopted are so hotly contested is indicative of the intense political debate the subject arouses (Anderson & Ruhs 2010). While a ‘global and visible phenomenon’ (Bloch & Chimienti 2011: 1), irregular migration is conceptually difficult to define and definitions are loaded. This chapter will therefore establish the rationale for why this thesis adopts the phraseology ‘transnational migrant subject’ (Kapur 2005). Using ‘transnational migrant subject’ to refer to those who cross borders into Malta extra-legally draws attention to their subjugation and subaltern status, notably without direct reference to their legal status.

States are actively working to control who they will allow to cross their borders (Crisp 2003: 10). This involves the construction of irregular migration as a problem (De Genova 2002; Portes 1978). The following chapter will examine the solutions to this problem pursued by governments of the Global North – efforts that represent the ‘securitisation of migration’ (Huysmans 2000, 2006). Despite these attempts at stopping, deterring and preventing migration, migration has proved resilient and irregular border crossing has continued, albeit via ever-changing routes and methods. In this chapter, irregular migration trends and their causes are briefly reviewed with a focus on the contemporary increase in mobility, particularly women’s mobility. As others have pointed out (Pickering 2011, van Walsum and Spijkerboer 2007), the bulk of the literature on migration, whether regular or irregular, has focused on the male experience.
The case study of Malta is introduced in this chapter. Malta, a Member State of the EU since 2004 and an island on its southern external border, has assumed an increasingly important role in the policing of irregular migration into Europe. The phenomenon of people arriving from Northern Africa by boat and seeking asylum began approximately a decade ago but has fluctuated in intensity in recent years. This chapter provides a background to the case study and builds a foundation for contextualising women’s experiences of migration across four key stages of the migratory journey – exit, transit, arrival and onward migration.

IRREGULAR MIGRATION

In 2011, migration is a hotly contested issue that dominates international, national and local politics (Spencer 2003). Mobility has increased as a result of a number of factors for which there is not an agreed theory (Massey et al. 2005). Massey et al. argue that a combination of economic and non-economic factors explain patterns of migration (Massey et al. 1998: 10). To illustrate, economic growth or decline, violent conflict and family reunification are all factors that influence migration. Migration is as ‘old as history itself’ (see also Manning 2005; Massey et al. 2005; Richmond 1994: 32); and as others have noted, as is its regulation (Torpey 2000, 2001; Weber & Bowling 2008). Scholars describe the past two decades, however, as introducing the ‘paradigm of migration management’ (Oelgemöller 2010: 409). States, predominantly in the Global North, have fixated on choosing and controlling who they will allow to cross their borders (Crisp 2003: 10).

This context has given rise to the terminology of ‘mixed flows’ of irregular migrants (Koser 2010: 182): describing people who cross borders in search of work and those fleeing persecution, both using similar migration routes and methods. The blurring of categories of asylum seekers and economic migrants is also termed the ‘asylum–migration nexus’ by many (Castles 2007: 26). Displacement, however, is more complex than the simplistic ‘asylum–migration nexus’ would suggest. The UNHCR no longer uses the term ‘asylum–migration nexus’ to refer to migration (Crisp 2008); rather, it insists that the concept distorts the reality that most migration is not from the South to the North. The UNHCR has broadened its mandate to include those who may not qualify for refugee protection but are still in need of protection, such as ‘stranded migrants, those with mixed motivations for migrating and trafficking victims’ (Crisp 2008: 5). The UNHCR now prefers the terminology ‘refugee protection and durable solutions in the context of international migration’ (Crisp 2008; see UNHCR 2007b).

The ‘mapping imaginary’ (Balibar 2010: 316) embarked upon by states in constructing their borders has led to the categorisation of migration according to strict binaries – between legal and illegal, and regular and irregular (Bloch & Chimienti 2011; Dauvergne 2008; Guild 2005; Pickering 2011). While migrants are a heterogeneous group, an impression of homogeneity is
often produced by states, in narrowly defining migration based on these simplistic binaries (Grant 2006). The construction of migrants as invisible, illegitimate or in need of humanitarian aid has led to the assumption that they can be categorised and contained (Oelgemöller 2010).

Scholars have traced the considerable resources and apparatus that have been built up around policies designed to enforce and police these categorisations (Bigo 1998, 2001, 2005; Tholen 2010). This is explored in greater detail in Chapter 4, but for now it is important to note that such border control mechanisms include greater surveillance (Hayes 2006; Loader 2002; Pickering & Weber 2006), borders that are more militarised (Carpenter 2006; Michalowski 2007), and expanded internal and external border controls enacted by an increased number of agencies involved in the policing of migration (Fekete 2009a; Guild 2009; Pickering 2005; Weber 2006). For all the talk of drug trafficking, human trafficking, terrorism and the arms trade that these surveillance and policing systems are ostensibly collectively designed to address, what they are really targeting is irregular migration (Aas 2011).

**DEFINITION**

Before turning to terminology, it is important to highlight some of the conceptual difficulties faced in seeking to define irregular migration. Irregular migration is diverse and aligns with categories including ‘illegal entries’, ‘overstayers’ and ‘rejected asylum seekers’ (Içduygu 2007: 148). People may move in and out of legal or illegal status (Grant 2006; Schuster & Solomons 2004). To illustrate, a student may enter a country with a student visa and overstay, or work more hours than their visa allows, and go from being legal to illegal as a result of contravening the requirements of their visa. Koser (2006) has provided a detailed definition of an irregular migrant as someone who has remained or entered without authority; been smuggled or trafficked; is unsuccessful in an application for asylum; and has circumvented immigration controls, such as through a sham marriage. Koser (2006) also highlights that an individual’s status can rapidly change. This fluidity inherent to categories of irregular migration makes it a difficult concept to define.

The definition of migration through exclusion enacted by states usually involves a process of racial ‘othering’ (Kofman et al. 2000: 8; Mountz 2010). As Kofman, Phizacklea et al. describe, ‘the major criteria used to label migrants becomes that of the visible marker of “race”’ (2000: 8). While irregular migration to Europe was previously dominated by people from Eastern Europe in a context in which émigrés were politically valuable, scholars observe that most irregular migrants into Europe now come from further parts of the globe (Bloch & Chimienti 2011). In the case of Malta, the overwhelming majority of those who irregularly arrive are from Sub-Saharan Africa (NSO 2008, 2009, 2010, 2011). Scholars point to the ethnic background of the majority of
those viewed as ‘irregular’ and ‘illegal’ within the EU to argue that a ‘colour bar’ (Balibar 2002) is enforced at the border.

Statistically accounting for irregular migration is another challenge that hinders understanding of the complexity of the issue. On the whole, most migration is regular. It is estimated that of the 56 million migrants who arrive in Europe each year, approximately only 10–15 per cent arrive extra-legally (Koser 2010). It is therefore still only a small proportion of the world’s population that migrates. As of 2005, about 3 per cent of the global population lived outside their country of birth, increasing from 2.5 per cent in 1960 (UNESA 2006). Moreover, irregular migration primarily occurs between countries in the Global South (Moses 2006).

Statistical data on irregular migration is difficult to obtain and verify because of the type of data sought (Anderson & Ruhs 2010; Moses 2006: 33; Salt & Stein 1997: 472). Those under examination are by definition outside accepted legal frameworks, and are therefore less likely to be detected or to want to be detected (Koser 2006). This means that accurate numbers are difficult to obtain. Moreover, only recently has there been some improvement in the collection of statistics disaggregated by gender (Pickering 2011) – a matter explored later in this chapter. Close analysis of irregular migration statistics is important as the selection and use of numbers are the ‘stuff of politics’ (Andreas & Greenhill 2010: 2). There is a tendency in some quarters to use statistics to alarm rather than inform (Koser 2010). An additional consequence of unreliable data is that irregular migrants are vulnerable to assumptions that remain untested. For example, despite irregular migrants in fact being a heterogeneous group, they are commonly perceived as homogenous (Grant 2006).

Despite this context of blurred definitions and unreliable statistical representations, a clear ‘hierarchy of irregular statuses’ is evident (Cvajner & Sciortino 2010). Cvajner and Sciortino surmise that some irregular migrants are more ‘deportable’, using De Genova’s (2002) term, than others. Some irregular migrants, such as those who work more hours than their visa allows as illustrated above, are less detectable and therefore less likely to be detained or the subject of law enforcement attention, unlike those who arrive irregularly by boat, for example. In this regard, work by Canadian scholar Alison Mountz (2010) is instructive. Mountz argues that visibility and visuality is crucial to understanding how states construct irregular migration as a security challenge. ‘Border crossings offer striking demonstrations of the importance of visibility to states in their work on migration’ (2010: xxxi); constructing irregular migration as a ‘exceptional crises’ along the border allows justification for increased securitisation of this geographic site (2010: 23). This approach to irregular migration produces and maintains a hierarchy of irregular migration statuses.

**TERMINOLOGY**
Scholars have drawn attention to the loaded use of terminology to define the subject in this area of research (Andreas 2003; Kapur 2005b; Pickering 2011: 11). Foucault (1972) argues that language and history are not conceptually neutral and are shaped by many forces – political, social and cultural. Further, the ‘power to define and create classifications, institutions and policies is neither disinterested nor un-gendered’ (Starr 1992 in Indra 1999). Recognising the importance of language, this section sets out the terminology preferred in this research to refer to those who cross borders extra-legally, and the rationale for doing so.

Falling foul of the ‘legal’ migration categories results in labelling that connotes migrant criminality. Aas (2011) argues that the conflation of crime and migration is creating a ‘specific dynamic of social exclusion’, transforming traditional social boundaries and producing an ‘illegalized global underclass’ (2011: 377). This underclass is described by Aas as the ‘driving force’ behind the creation of many of the ‘transnational surveillance networks’ (2011: 337). The language used to refer to people who cross national borders is heavily loaded with ‘security related content’ (Guild 2009: 14). According to Guild, the term ‘illegal migrant’ is most commonly used in EU government discourse. In a direct conflation of asylum with illegality, ‘illegal migrants’ are also termed ‘asylum seekers’, or variants thereof, such as ‘economic migrant’ and ‘political migrant’. Crisp (2003) writes that in the UK the media, politicians and pressure groups have contributed to the promulgation of distorted images of asylum seekers as criminals and as a threat. The UNHCR has abandoned its use of the term ‘asylum’ as a result of the pervasive negative connotations the word has come to evoke (Crisp 2008). Chapter 5 examines how those who seek refugee protection struggle for recognition in this context, while the impact of the conflation of asylum and criminality is further explored in Chapter 4.

Taxonomies generated from ‘above’ – by the state and the media – adopt simple and readily understandable terms such as ‘clandestine’, ‘irregular’ and ‘illegal’ (Anderson & Ruhs 2010; Bloch & Chimienti 2011; Pickering 2011). As Soguk (2007) points out, the terminology used by the state has a state-centric focus that reinforces the notion of a legitimate crossing of borders and its opposite. These ‘border-related’ definitions of migration ‘depend on the deployment of a claim by the state to a sovereign right to designate who are its citizens and who are not’ (Noiriel 2001 in Guild 2009: 11). The use of state-centric terminology led Guild to develop ‘critical migration studies’ to place the emphasis on the resistance that may be enacted by individuals, and to alert people to the need to deconstruct the conventional claims of the state (Guild 2009: 22). Guild argues that it is important to take the concept of the individual as the first and foremost line of inquiry in research on migration. Critical migration studies examine the ‘normative consequences of the allocation of a title’ (Guild 2009: 13). The language used to talk about crossing borders has a tendency to either legitimise or de-legitimise the action in the eyes of the state.
Taxonomies created from ‘below’ will often employ terminology that de-emphasises the connotation of criminality, with words such as ‘undocumented’ or ‘sans papiers’ (‘without papers’) (Anderson & Ruhs 2010; De Genova 2002; Düvell 2010). Pugh (2001) uses the term sans papiers with the express purpose of reframing the debate towards one focused on welfare and cooperation. This was the terminology chosen by ‘illegals’ in France during demonstrations in 1996. Pugh is critical of the term ‘illegal’ as, he argues, people on the high seas are not ‘illegal’ (in reference to their ability to apply for refugee status under the 1951 Refugee Convention). He asserts that the terminology sans papiers enables people to engage on a human rights basis, rather than from an already subordinate perspective. Pugh argues that this recasts people who are sans papiers as ‘vulnerable to exploitation by criminal networks’, in contrast to a construction of ‘migrant criminality’. Pugh argues that the Euro-Mediterranean Partnership framework already exists to approach irregular migration as a welfare issue and as an opportunity for enhanced cooperation. However, the welfare imperative has received little attention among policy-makers in comparison to the extensive focus on securitisation and policing.

Andreas (2003) uses the phraseology ‘clandestine transnational actors’, defined as ‘non-state actors who operate across national borders in violation of state laws and who attempt to evade law enforcement efforts’ (Andreas 2003: 78). In line with this definition, Andreas contends that actors as vastly different as terrorists, drug traffickers and unauthorised migrants share the common characteristic of being the target of border control. Clandestine transnational actors have operated for as long as border controls, but have shifted their approach over time in response to the policies of destination states. This definition offered by Andreas attributes agency to the person crossing borders.

While Dauvergne (2008) argues that the best way to define irregular migration is by referring to the migration laws of the destination country, Pickering (2011) uses the phraseology ‘extra-legal border crossing’ to avoid the ‘political loading’ of terms such as ‘illegal’ and ‘clandestine’, and to raise the spectre of future law reform (2011: 4). Weber and Pickering (2011) have chosen the term ‘illegalised traveller’ to emphasise the attribution of illegality by the state. Bloch and Chimienti (2011: 2) define ‘irregular migrant’, in line with the International Labour Organisation’s definition, as those who do not have resident status in the country in which they reside. They see this definition as a continuum between two ‘ideal’ types – perfect and irregular. Scholars have thus sought to capture complexity and nuance in developing terminology to engage with the issue of irregular migration.

The categorisation of citizen or non-citizen is a subject that is attracting increasing attention from irregular migration scholars (Aas 2011; Bosworth & Guild 2008). Most recently, Aas (2011) has examined irregular migration through the lens of surveillance and sovereignty, challenging the assumption of universality of citizenship. This literature critical of citizenship interprets
immigration controls through the spectre of the binary between citizen and non-citizen, or as Hyndman puts it, ‘supracitizens’ and ‘subcitizens’ – categories that are linked but have ‘unequal identities’ (Hyndman 2000: 111). Beyond the consideration of binaries, the scholarship on ‘denizens’ – those with partial legal rights short of full citizenship – has re-emerged in the context of EU integration (Geddes 2005). ‘EU denizenship’ is how Baubock and Guiraudon (2009) have characterised the watered-down legal rights given to third-country nationals who live in Member States of the EU. To an extent, the refugee framework comfortably moulds to the citizen/non-citizen dichotomy. The very concept of a ‘refugee’ reinforces statist assumptions about people and their implicit attachment to territory (Watson 2009). The attribution of quasi-legal status through subsidiary and other complementary forms of protection that fall short of refugee status similarly conjures notions of ‘refugee denizens’ in the EU.

**THE ‘TRANSNATIONAL MIGRANT SUBJECT’**

Kapur (2005a) uses the term ‘transnational migrant subject’ to refer to the ‘subject who crosses borders and occupies a subaltern position’ (2005a: 139). In adopting the word ‘subaltern’, Kapur signals her engagement with postcolonial theory and subaltern studies. As she explains, referring to the adoption of a ‘subaltern position’ highlights ‘the fact that certain voices have been excluded from the dominant narratives and telling of history’ (Kapur 2005a: 139). In this definition, Kapur appears not to distinguish between migrants and refugees in a strictly legal sense.

This thesis will adopt the term ‘transnational migrant subject’ used in Kapur’s (2005) research, in exploring and understanding the experiences of women who exit and transit countries of the Global South before entering destination countries in the Global North. Kapur’s definition is preferred as it is centred on the experiences of those marginalised by their movement across borders and is not obstructed by the technicalities of legal definitions of migration status. It also alerts us to the construction of ‘the other’ via the essentialising binaries discussed earlier, and the hegemonic premise on which this interpretation is based. As the transnational migrant subjects who are the focus of this research mainly originate from Somalia, a country embroiled in a protracted conflict, their experiences as potential ‘refugees’ will impact upon the outcome of this research. Where this is the case it will be stated as part of the data analysis, in line with Nolin’s (2006) assertion of the importance of engaging with the complexity of experiences of transnational migrants.

The categories of ‘migrant’ and ‘refugee’ constitute the legally recognised categories of people who cross borders, and a highly technical legal apparatus has evolved to sort and classify transnational migrant subjects. Many people who cross borders, however, do not fall neatly into such categories, and restrictions have been introduced to narrow these legal definitions in any
case (Guild 2005). Therefore, the utility of ‘legal labels’, specifically in explaining the complex patterns of mobility of those who irregularly cross borders, is questionable. The experiences of those who do not fit neatly into these legal categories raise important questions around harm and the factors driving irregular migration that are critical to building a contextual understanding of the issues for criminologists.

FRAMEWORKS FOR EXPLAINING IRREGULAR MIGRATION

Koser (2010) has proposed several frameworks for accounting for irregular migration trends at both the macro and micro levels. The first is based on an understanding of structural issues (Castles & Miller 2003; Koser 2007). This frame aligns with Portes’s (1978) contention that structural determinants in both the receiving and sending countries influence migration. Globalisation has created fertile ground for migration, in contributing to structural change in both the sending and the receiving country (although such a distinction may be impossible to maintain as countries more commonly occupy the position of both sending and receiving). Presently, global inequality is at the highest level ever recorded (Milanovic 2007). Governments are scrambling to address these inequalities through migration management programs aimed at removing the compulsion to migrate, known as addressing the three Ds – development, demography and democracy (Grant 2006). Linking development and migration policy has gained particular traction within the EU (Guild 2009).

Additionally, globalisation has enhanced networks and led to a greater awareness of the better opportunities existing in other countries. Globalisation has heightened the levels of mobility, but has also increased ‘personal contacts, complexity of familiar and residential arrangements and forms of belonging to diverse socio-cultural and political communities’ (Yuval-Davis, Anthias, & Kofman 2005: 517). Technology has played a role in making it easier for people to travel larger distances (Koser 2007), and indeed to return home, leading to an increase in temporary and circulatory migration. A rise in the demand for cheap labour, discussed in the next section, has added an additional allure to people seeking employment opportunities (Koser 2006; Dauvergne 2008).

The second framework adopted by Koser sees the increase in irregular migration as an ‘unintended consequence of restrictive asylum and immigration policies’ (Koser 2000; Castles 2004 in Koser 2010: 188). While not being able to establish a ‘causal link’, this body of research has noted the growth in people-smuggling agencies devoted to circumventing immigration restrictions (Andreas 2003; Michalowski 2007; Pickering & Weber 2006). Problematically, it has become almost impossible to migrate legally, especially for work (Melossi 2003; Dauvergne 2008). Scholars have also shown how these processes result in increased exposure to risk and
harm for those crossing borders outside legally sanctioned pathways (Weber & Grewock 2011 in press).

The third and final framework, closely related to the two outlined above, examines the development of the migration industry (Koser 2010: 188). Koser extends Salt and Stein’s (1997) conceptualisation of migration as a business with ‘institutional networks’, a complex profit and loss system and a clear pathway to financial gain (Salt & Stein 1997: 467). Transversality is centred on the business model of migration (Pickering 2004). Adopting this angle, criminologists have analysed how the construction of people smuggling as an issue of national security by law enforcement agencies has fuelled the migration industry and bolstered sovereign powers extraterritorially (Pickering 2004); restrictions on immigration and asylum have contributed to the emergence of an industry dedicated to circumventing those very restrictions. The development of this migration industry has created a significant profit motive and hence a great deal of momentum, heightened demand and agents who actively recruit individuals. Koser’s framework captures micro- and macro-level determinants to explain the dynamics of irregular migration.

GENDERED TRENDS IN IRREGULAR MIGRATION – WOMEN

This section provides a brief overview of gendered irregular migration trends with respect to women. Available evidence suggests that the number of female migrants is on the rise (Martin 2001: in Nolin 2006; van Walsum & Spikerboer 2007). Koser (2010: 191) argues that women comprise a ‘substantial proportion’ of irregular migrants. A statistical account of migration ought to acknowledge the inherent unreliability of statistics, particularly when it comes to a breakdown by gender (Kapur 2005b; Kofman et al. 2000; Pickering 2011). Quantitative gender-based studies are hindered by the lack of statistical gender-disaggregated data collected by governments, international organisations and NGOs (Pickering 2011). Statistics are often incomplete and the method by which they are collected is often unsystematic (Bhabha 2004: 232). One consequence of incomplete statistics is that women’s migration has tended to be overlooked and relegated to the margins. Moreover, without a complete picture, understandings of the complexity of women’s migration are necessarily impaired. Similarly, a dearth of qualitative empirical studies of women’s irregular migration, has further hampered a contextual understanding.

The present increase in the number of women migrating can be understood in various ways. Family reunification is said to account for some of this increase, although women are increasingly migrating on their own (Ennaji & Sadiqi 2008). Martin (2001 in Nolin 2006) contends that one of the primary reasons for the increase in women’s mobility is the growing levels of global poverty, combined with an increase in women seeking to better their own lives and those of their children. A lack of food security, and with it growing threats to sustainable living, has
‘pushed women and girls into assuming key roles as income-earners for their families’ (Kapur 2005: 221; see also Sassen 2000). Wonders (2006) attributes women’s increasing mobility to the detrimental impact of structural adjustment programs, which have forced women, who represent the majority of farmers in the world, off their land in search of greater economic opportunity (see also Eschle 2002). This has led ever more women to migrate to urban areas and foreign countries in order to make a living. Furthermore, traditional impediments to women’s flight are changing, resulting in more women migrating (Bhabha 2004: 235).

There is a considerable volume of research demonstrating that people crossing borders irregularly are using far riskier and more dangerous routes, resulting in increased exposure to harm (Bloch & Chimienti 2011; Grant 2005; Koser 2005). Recent scholarship by Weber and Pickering (2011) seeks to systematically document transnational migrant subject fatalities across the Global North (See also Pickering & Cochrane 2011). Research has shown that one of the implications of the increased irregular migration of women has been their heightened exposure to sexual violence (Carpenter 2006; HRW 2008). Indeed, those who pursue irregular means to migrate are in extremely vulnerable positions (Pugh 2001). As Pugh writes:

[W]hether refugees or migrants and by whatever form of travel ... they are vulnerable to blackmail, extortion and imprisonment for ransom money because their status is illegal or subject to costly and lengthy administrative and legal processes. Most have few possessions, limited means of support and are subject to racist attacks. (Pugh 2001: 5)

Women have been shown to be at greater risk than men of perishing from dehydration on the US–Mexico border (Falcon 2001). Research on exposure to harm in the informal economy suggests that gender-based discrimination in employment results in women being exposed to higher risks (Koser 2010). The increased exposure to risk, harm and loss of life is an important yet alarming development that has been highlighted by the irregular migration scholarship.

The increased segmentation of the labour market in the industrialised world, coupled with the preference for skilled migration programs, is creating fertile conditions for irregular migration. The demand for sex-segregated labour – including caring, service sector roles and sex work – has also increased (Kofman et al. 2000; Sassen 2000). Declining wages for men has meant that more women are entering the workplace, and the gap in the provision of care at home which has consequently emerged is being filled by migrant women (Ehrenreich & Hochschild 2003). In what Hollifield (2006) calls the ‘liberal paradox’, ‘unskilled’ workers are unlikely to get a work visa in countries in the industrialised world, despite the demand for their labour remaining high (Bloch & Chimienti 2011; Melossi 2003). The increased segmentation of the labour market in industrialised countries means that high-income jobs exist while ‘unskilled’ jobs remain unfilled (Koser 2007; Koser 2010). ‘Low-skilled’ workers, however, are unlikely to be granted a visa.
under the skilled visa categories that dominate immigration controls in the industrialised world (Bloch & Chimienti 2011). Bloch and Chimienti point out that these workers would have previously been welcome in Europe under the guest worker schemes that dried up in the late 1970s and early 1980s. The shortage of workers in low-skilled jobs, coupled with the difficulty of obtaining work visas for this type of employment, is increasingly rendering irregular migration foreseeable.

THE IMPORTANCE OF USING A GENDERED LENS

A survey of the literature on gender and migration reveals that for a long time, gender was at the periphery of studies on migration (van Walsum & Spijkerboer 2007). People were largely represented without gender, age or other specifics, except perhaps ethnicity (Colson 1999). While Chapter 5 focuses on the literature on refugees and gender, this section will examine how the existing research approaches gender and irregular migration and the gaps that this thesis seeks to address by exploring the experiences of women who arrive as irregular migrants into Malta.

Scholarship on women’s irregular border crossing is in a period of growth. Scholars from a variety of disciplines are examining this phenomenon, including those from criminology (Carpenter 2006; Pickering 2005, 2011; Pickering & Weber 2006; Wonders 2006), law (Dauvergne 2008; Kapur 2005b), geography (Nolin 2006), history (Banerjee 2010) and migration studies (Bhabha 2004, 2007; Bhabha & Shutter 1994; Kofman et al. 2000; Palmary, Burman, Chantler, & Kiguwa 2010; WING 1985). Intersections of race, class and gender are also increasingly captured in such research (Yuval-Davis et al. 2005). The analysis of gender has additionally moved from an analysis of women as ‘gender’ to a more nuanced analysis of gendered positions within the normative discourses of state policies and practices (Palmary et al. 2010).

Conceptually, gender is an important analytical tool through which to view migration for two key reasons. First, being alert to gender as a key relational dimension creates new, previously overlooked avenues for examining migration (Behera 2006). Women have traditionally been constructed as passive agents in migration studies scholarship, often perceived as dependants of their male counterparts (Simon and Bretell 1986 in Kofman et al. 2000: 3). Writing in 2002, Ryan views the Western literature on migration as consisting primarily of accounts of the male experience (Ryan 2002). Where women do appear, the assumption is that their migration is associational and undertaken for family reasons (Behera 2006). ‘Masculinist’ definitions of employment and skill in Western immigration policies also have a gendered impact (Giles 1999). Women may be at a disadvantage that is attributable to gender inequalities in access to education or senior roles of employment in their country of origin (Kofman et al. 2000). As Giles
notes, these schemes confine women to private ‘householder’ roles and have the potential to isolate women and create further barriers to securing higher paying work outside the home (Giles 1999). A gendered analysis exposes the gender bias in current categories of legal entry that are open to migrants.

Second, migration opportunities – related to the reasons for departing, the journey, transit, settlement – affect men and women differently, leading to differential engagement with service providers (Nolin 2006: 32). The migration experience is highly varied according to the individual migrant and the specific conditions at each border. A gendered analysis of this context enables a greater appreciation of the different factors influencing people’s journeys and decisions. Against a background of migration literature that has largely focused on the male experience and seen women’s migration as associational, this study seeks to draw out how gender shapes each of the four stages of their migratory journey—exit, transit, arrival and onward migration. This involves an analysis of how gender shapes decision-making around exit, how conflict affects women and how the journey to secure protection is experienced by women. A gendered account of arrival involves an exploration of how women’s experiences as primary caregivers to their children, for example, may impact on their experiences in Malta, economically, socially and legally. Examining the available pathways to exit Malta from a gendered perspective enables insights into how women’s mobility is perceived both by other EU Member States and by the US, and how women’s vulnerability is constructed within programs that foster onward migration. Gender is an important lens through which to analyse the impact of the securitisation of migration.

MALTA

A Member State of the EU since 2004, Malta is on the frontline of policing and securing Europe’s Central Mediterranean borders against unauthorised arrivals (Gil-Bazo 2006; Klepp 2010). In the first half of 2010, this region received 90 per cent of all asylum applications lodged in the EU (UNHCR 2011b). This proportion is predicted to increase in light of the recent unrest in Libya and other parts of North Africa (UNHCR 2011f).
Malta, a country with a modern history dominated by government-sponsored emigration, and therefore a non-traditional immigration country (Bloch & Chimienti 2011), has only recently developed policies and legislative frameworks governing the domestic handling of asylum applications. This policy formation was a prerequisite for membership to the EU, which Malta gained in 2004. The Maltese Government adopts a policy of mandatory detention towards those who arrive by boat. Irregular migrants are housed in detention centres in conditions that have been resoundingly criticised by numerous human rights organisations (LIBE 2006; MdM 2007; MSF 2009b). Women must endure these harsh conditions, in confined spaces, while they await the determination of their asylum application.

In 2009, Malta received the highest number of asylum seekers in Europe per head of population (Eurostat 2010). It also had the highest rate of acceptance of asylum applications in the EU and globally (Hammarberg 2011) – a statistic that provides a concrete indication that the majority of those who arrive by boat are indeed fleeing persecution. Since the beginning of this decade, Malta has seen a dramatic increase in the number of boatloads of people seeking asylum arriving on its shores or within its territorial waters. Reports indicate these boats set sail from either the Libyan or Tunisian coastline (Ostergaard 2008). The composition of those on board is
‘mixed’; the majority apply for asylum with the Office of the Commissioner for Refugees in Malta (NSO 2009). Available evidence suggests that the overwhelming majority of these transnational migrant subjects are Sub-Saharan African, with Somali nationals comprising the largest majority, at 60 per cent of all arrivals (Eurostat 2010).

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). As Figure 2 shows, in 2001, 57 people arrived by boat in Malta, increasing to 1686 in 2002, and peaking at 2775 in 2008 (MJHA 2009; NSO 2009). 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). In 2001, the proportion of people arriving in Sicily or Lampedusa rose from 22 per cent of the total number of arrivals to Italy by sea, to 75 per cent in 2002 (Tennant & Janz 2009: 11). In 2008, this number increased to 86 per cent for Lampedusa alone, equating to 30,978 people (Tennant & Janz 2009: 11). The number of transnational migrant subjects arriving in Lampedusa is depicted in Figure 3. Malta, as part of the Central Mediterranean, is receiving a growing number of boatloads of people seeking refugee protection.

Figure 2. Number of transnational migrant subjects arriving in Malta by boat 2001–10. Data compiled by the National Statistics Office, Malta (NSO 2011).
As Figures 2 and 3 above demonstrate, the numbers of people arriving irregularly rapidly declined in both Malta and Lampedusa in the period 2009–10. In 2010, only 47 people arrived in Malta – the lowest number in a decade (NSO 2011). This drop coincided with efforts to promote border policing cooperation between the EU and Libya, particularly the bilateral agreement struck between Libya and Italy, detailed below. This has proved to be more effective than the Frontex (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) patrols throughout 2006-2009, to which I later return, in decreasing the number of people arriving by boat in Malta (Phillips 2010). The unrest in Libya has since prompted the dissolution of these agreements, so that both Italy and Malta have again seen more boats arrive on their shores (UNHCR 2011a). Numbers have increased dramatically since the Libyan conflict has erupted, totalling over 50,000 in the months leading up to September 2011 for Lampedusa, and over 1100 for Malta by the end of March 2011 (Hammarberg 2011).

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 2004, an agreement between Italy and Libya was reached on ‘illegal migration’. In 2009, the two countries ratified a further agreement that intensified Italy’s involvement in border security in Libya (HRW 2009b; Klepp 2010; Ronzitti 2009). The ‘Treaty of Friendship’ implements a scheme whereby the 2000 kilometres of Libyan coastline is patrolled by ‘mixed crews’ on Italian patrol boats (Ronzitti 2009: 130). In addition, arrangements have been formalised to police land borders in Libya by satellite, entailing a detection system financed jointly by Italy and the EU which effectively pushes the patrol of the EU’s 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 Malta and the Italian islands of Sicily and Lampedusa throughout 2010. However, these arrangements have had significant human rights implications: the agreement has allowed border control agents to forcibly return boats carrying migrants to Libyan shores upon arriving in Italy, without asylum processing procedures being carried out, thus raising the spectre of refoulement (HRW 2009c).

Intensified border control in other parts of Europe also greatly influences the fluctuating numbers of people arriving by boat in Malta. While research into the complexity of migration routes is only now developing, Lutterbeck (2009) attributes the initial shift in migration routes into the EU to Italian policing efforts along the Adriatic coast, which have reduced the number of arrivals through Albania to Italy (Lutterbeck 2009: 122-123). Similarly, Spanish policing deterrents off the Strait of Gibraltar are thought to be contributing to the large numbers of boats departing Libya (Icduygu 2007). Both Spain and Italy had to enhance their border control practices in response to pressure from Northern European Member States, and before the implementation of the Schengen Agreements that abolished internal EU borders for participating Member States (Düvell 2010; Watts 2002).

Malta’s considerable maritime boundaries increase its exposure to the phenomenon of extra-legal migration by sea. In stark contrast to its tiny landmass of 316 square kilometres, the search-and-rescue zone surrounding Malta’s five islands extends for 250,000 square kilometres (Lutterbeck 2009: 128). A legacy of the period of British colonialism, when the island nation was an important maritime base for the British Empire in the region (Lutterbeck 2009: 128), Malta derives great economic benefit from sustaining this broad search-and-rescue zone through the receipt of revenue from air traffic over this zone (Lutterbeck 2009: 133). One NGO participant from this study attributed Malta’s enthusiasm for maintaining this large search-and-rescue area to the potential for oil exploration (NGO 2).

The EU has increased the resources it provides to the Armed Forces of Malta (AFM), who police Malta’s search-and-rescue area in addition to the operations of Frontex. Although it initially cooperated with the agency, the Maltese Government has opted out of participating in Frontex’s operations for the past two years. As a condition of this arrangement, Frontex must be allowed to bring the boats it intercepts to the ports of participating Member States. Reportedly, this is the stumbling block that has the Maltese Government declining to participate (Camilleri 2011). This highlights what Aas (2011: 333) describes as the continuing importance of the sovereignty of individual nation-states despite the existence of supranational arrangements.

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Available statistics suggest a slight increase in the number of women arriving in Malta and applying for asylum, and a slight decrease in the number of men, as Figure 4 below illustrates (JRS 2008). Statistics from 2005-2008 are used here as there are no other publicly available statistics that detail a gender break down of the numbers of men and women arriving in Malta by boat.

![Gendered statistics on the number of transnational migrant subjects arriving in Malta by boat 2005–07. Data compiled by the Jesuit Refugee Service, Malta (JRS 2008).](image)

Although the objective of this study is only to examine the arrivals of adult women, the gendered child statistics constitute an area warranting further investigation. They show a steady number of female children arriving in Malta and a dramatic increase in the male child population. As this research only has ethical clearance to interview those over the age of 18, these statistics on children are not included in this investigation.
Somali women are the focus of this research because they comprise the largest ethnic group of women who arrive in Malta and apply for asylum. Of the 2387 people who made an asylum claim in 2009, 439 were female, or just over 18 per cent of the total asylum seeker population (NSO 2010). The number of Somali female applicants was 297, or 67 per cent of the total number of female asylum applicants. Nigeria had the next highest proportion, with 72 female applicants for asylum, or 16 per cent of the total (NSO 2010).

The numbers of people arriving by boat in Malta have fluctuated at different points over the past decade, and in the current moment the numbers arriving to seek asylum are on the increase. The statistics show that the majority of those who arrive are from the Horn of Africa, with a significant proportion fleeing the protracted conflict in Somalia. The numbers of women irregularly arriving in Malta is increasing, with Somali women comprising the largest ethnocultural group of women. This is consistent with the broader irregular migration trends, which indicate that a higher number of women are accessing irregular migration channels globally (van Walsum & Spijkerboer 2007).

**CONCLUSION**

In this era of differential access to sanctioned mobility, legal opportunities to migrate have shrunk. People who cross borders are broadly categorised in binary terms that reflect the state’s perceived chief role in managing migration – as legal or illegal, regular or irregular. Migration levels, however, have remained persistent and the literature reveals that structural factors are increasingly driving migration in the current period of globalisation.
Irregular migration is difficult to define and quantify. Scholars have noted how a ‘hierarchy of irregular statuses’ has emerged whereby some forms of mobility become more visible and more political. The terminology used to describe mobility is persuasive and is used evocatively. There are clear distinctions between the taxonomies from above – produced by the media and the state – and the taxonomies from below. Taxonomies from below use terms that emphasise the agency of those crossing borders irregularly and function to decentre the role of the state in migration. This thesis adopts the term ‘transnational migrant subject’ (Kapur 2005) to denote the subaltern status of those who are crossing borders and being broadly categorised as illegal, irregular and clandestine.

Increasingly, women’s migration is capturing the attention of scholars. Research has demonstrated that in the past women’s migration has been narrowly viewed as associational, and statistical representations have struggled to depict with accuracy or reliability the complexities of women’s migration. A survey of irregular migration trends reveals that women’s mobility has increased. This thesis aims to make a contribution to the existing scholarship in this area by conducting a qualitative study on the experiences of women who cross borders and irregularly arrive in Malta. Malta was selected as the location in which to base this study as it receives the highest number of applicants for asylum per head of population in the EU, and the number of those it recognises as applicants for humanitarian protection is also among the highest. Moreover, it is receiving an increasing number of women arriving by boat. Malta is part of the EU and so this case study provides a pivotal snapshot of women’s irregular migration in a global context.
CHAPTER 4: THE SECURITISATION OF MIGRATION – DETERRING, PUNISHING, AND REDUCING AGGREGATE RISK OF, GLOBAL MOBILITY

Research on ‘the border’ has become a vast, interdisciplinary field (Newman 2006). Traditional geographers defined the border in static terms as a line on a map (Hartshorne 1936). Emerging definitions of the border reconfigure it as mobile in time and space (Weber 2006), as disaggregated (Bigo 2005) or even as personally embodied (Ortiz 2001; Khosravi 2010; Wonders 2006). Borders are increasingly viewed as ‘the primary site of expression of the exclusionary powers of the state’ (Weber 2002: 22). As such, borders are understood as operating in highly gendered, racialised and classed ways to ‘draw a line between Us and Them more rigidly’ (Bauman 2004: 68). Bigo (2005) prefers the terminology of ‘frontiers’, defining them not as a line between outside and inside but as a ‘Mobius ribbon where the perception of what is inside and what is outside varies depending on the position of the observer’ (2005: 52). Bigo’s definition highlights how borders are perceived differently by different observers – whether they be members of law enforcement agencies, citizens of that state, or transnational migrant subjects. It is the position of this transnational migrant subject that is central to my analysis. Increasingly, this positioning of the transnational migrant subject seeking refugee protection is determined by border controls that stratify mobility, and work to deter and punish those seeking to cross to the ‘inside’, even within the geographical borders of the EU.

Various theoretical frameworks have been proposed to account for the reinvigorated sovereign powers aimed at including and excluding transnational migrant subjects at the border which have occurred in recent decades (Bosworth & Guild 2008; Huysmans 2000, 2006; Pickering 2005, 2011; Weber 2006; Wonders 2006, 2007). This chapter organises this extensive body of literature according to a frame of the discourses, policies and practices that together underpin the securitisation of migration (Huysmans 2000, 2006). Huysmans (2006: 64) has identified three major themes within this ‘multidimensional process’ of securitising migration in the context of European integration: internal security, cultural identity and the crisis of the welfare state (Huysmans 2006: 64). This chapter explores these themes and the literature that extends on and applies them. The reassertion of sovereignty through the securitisation of migration can be likened to punitive law and order approaches that seek to affirm the myth of the sovereign’s ability to control crime (Garland 1990, 1996). The securitisation of migration can be identified as coalescing to produce dynamic but familiar criminal justice responses that combine ‘new’ and ‘old’ forms of penology – punishment and deterrence, and risk reduction. They have also increased the exposure to risk and harm for transnational migrant subjects at various ‘migratory fault lines’ (Grant 2011) around the globe (Weber and Pickering 2011).

The securitisation of migration is, in the main, engaged by advanced industrialised countries of the Global North (Andreas 2000; Nevins 2001; Pickering 2005; Pickering & Weber 2006;
Richmond 1994; Wonders 2006). While the securitisation of migration is discussed at the international level, the EU and Malta form the primary focus of this research. The analysis will develop key conceptual questions to be considered in undertaking research into the gendered and racialised impact of the securitisation of migration on women’s experiences of exit, transit, arrival and on-migration in Malta. These conceptual questions are: What are the tensions between the securitisation of migration and refugee protection? What are the gendered dimensions of deterrence, punishment and risk-reduction? How does securitisation impact women and shape their journey in seeking refugee protection? Two key catalysts for the considerable shifts in the nature of the border are the processes of globalisation and securitisation.

GLOBALISATION AS ‘UNBUNDLING’ SOVEREIGNTY

Globalisation has created new dilemmas for sovereign states (Sassen 1996). While it lacks a settled definition, globalisation can be broadly defined as increased ‘international connectedness’ (Hirst & Thompson 2002). This connectedness potentially poses a challenge to the traditional notion of sovereignty that underpins our modern state system (Giddens 1985). Sovereignty, according to legal theorists, is one of the essential characteristics of the modern nation-state (Bodin in Juss 2004; Minkkinen 2007). Wachspress (2009) defines sovereignty as constituting a ‘boundary or framing device that is both physical – the sovereign is considered responsible for the spatial integrity of the state – and legal – the reach of sovereignty is co-extensive with the reach of its laws, and that structures a global order’ (2009: 317). Critically, this physical and legal power entails the ability to include and exclude people, subject to minimal international legal obligations. Refugee protection constitutes one such obligation (Juss 2004). The physical and legal nature of sovereignty has been affected by globalisation (Sassen 1996; Wonders 2006, 2007; Pickering 2005; Dauvergne 2008); however, opinions differ as to how this has occurred. Scholars have analysed the friction at the intersection of globalisation and sovereignty and the resulting impact on borders. This section traces these debates in the three disciplines most relevant to this study: international relations, migration studies and criminology.

INTERNATIONAL RELATIONS

International relations scholars have forecast different futures for the border and the nation-state in considering the relationship between globalisation and state sovereignty (Held, McGrew, Goldblatt, & Perraton 2000). A popular characterisation of globalisation’s impact on sovereignty throughout the 1980s and 1990s (Andreas 2000) was the evolution to a ‘borderless world’ (Ohmae 1995: 11), involving the ‘denationalisation’ of economies, as nation-states became increasingly unsuitable as ‘business units in a global economy’ (Ohmae 1995: 5). According to these ‘hyperglobalizationists’ (Devetak 2007), or ‘hyperglobalizers’ (Held et al. 2000),
globalisation has made, or is in the process of making, the nation-state redundant and borders irrelevant (Ohmae 1995; Reich 1992). These scholars understand states as assuming the role of a local authority (Reich 1992) within the global economy. This prediction sees the nation-state, and its twin concept sovereignty, dramatically altered, and its functions considerably eroded (Jayasuriya 1999). However, as many scholars note, this characterisation of borders has failed to eventuate (Newman 2006; Andreas 2003; Dauvergne 2008; Pickering 2006).

Indeed, globalisation ‘sceptics’ question the evidence underpinning the hyperglobalisation thesis (Hirst & Thompson 1996). Hirst and Thompson dispute that the current period of economic interdependence is historically unprecedented. Weiss (1998) argues that the international economy is now less global than that which existed in the historical period of Empires. While acknowledging it is possible to characterise the current moment as one of heightened internationalisation, Hirst and Thompson (1996) argue that the power of national governments to regulate the international economy cannot be underestimated. Rather, they interpret current conditions as a process of regionalisation taking place around three main trading blocs: Europe, the Asia-Pacific and North America (Boyer & Drache 1996; Hirst & Thompson 1996). The creation of an external border around the EU lends weight to this contention.

Sassen (1996: 31) argues that globalisation can be understood as ‘unbundling’ the traditional relationship between sovereignty, territory and state power; a view with which ‘transformationalists’ agree (Held et al. 2000; Ruggie 1993). This is best illustrated in the case of the EU, where aspects of sovereign power have been transferred to the supranational level (Koslowski 2001). Sassen (1996) points to a partial denationalising of territory and a partial shift in some aspects of state sovereignty (Sassen 1996: xii). Nation-states are adapting to the new context of state functionality under globalisation, with some powers weakened and others strengthened. Andreas and Snyder (2000) criticise what they see as the narrow view of some international relations scholars who posit that a decrease in interstate conflict, together with the increased economic permeability of borders, is rendering borders irrelevant. Rather, they point to the ‘massive processes of securitised re-bordering’ taking place in advanced industrialised nations to regulate/police migration to demonstrate that the transformation in state sovereignty has failed to result in a ‘borderless world’ for many. Transformationalists highlight the increasing stratification of populations under globalisation, both between and within countries of the North and the South (Hoogvelt 1997). Far from eroding borders, globalisation is disrupting traditional binaries of internal/external, domestic/international, and sovereign states are adjusting and responding accordingly (Sassen 1996; Rosenau 1990). The transformations of state sovereignty arising from globalisation, particularly of the sovereign power to include and exclude, form the subject of significant debate within the scholarship on migration.
International migration, characterised as a ‘central dynamic’ of globalisation, is placing the sovereignty of states under strain by challenging their ability to control it (Castles & Miller 2009: 3). This has led to the adoption of repressive and permissive immigration policies (Huysmans 2006). Before expanding on the analysis of these trends, it is important to note the research that places international migration within a historical context. Historically, globalisation is but one of many phenomena to have influenced the mobility of people across borders (Castles 2002; Castles & Miller 2009; Manning 2005; Taylor 2005). In the past, global shifts in migration have been driven by periods of both industrialisation and urbanisation (Manning 2005; Castles and Miller 2009). Mobility in the current moment, however, is more global in scope, and plays a central role in driving the domestic and international policy platforms of governments (Castles and Miller 2009).

Migration scholars contend that globalisation is shaping migration trends in several key ways (Castles 2002). Castles points to five primary trends under globalisation: improvements in technology, an increase in circulatory migration, an increase in the desire for skilled migration, a heightened transnational consciousness, and an increase in informal networks that transcend and undermine state control policies. Other scholars add to this list growing physical insecurity resulting from neoliberal globalisation, and the impact of programs such as structural adjustment and privatisation, which have produced economic insecurity (Kapur 2005b; Wonders 2006; Zolberg, Suhrke, & Aguayo 1989). There is also growing evidence of an increase in the number of women who are migrating (Peterson and Runyan 1999; Kapur 2005), seen by some as a consequence of the appetite of the global economy for workers (Melossi 2003; Sassen 1998; Wonders 2007).

Paradoxically, state attempts to regulate migration have surged alongside irregular migration (Castles and Miller 2009: 3). In contrast to hyperglobalisers’ claims of porous borders, migration scholars (Baldaccini 2010; Castles & Miller 2009), particularly migration law scholars (Dauvergne 2008; Kapur 2005a; Taylor 2005), assert that legal avenues for the movement of people have shrunk. In the 1950s and 1960s, most of (post-war) Western Europe welcomed migrants as workers and considered Southern Europe a reservoir for this purpose, and the legal status of migrants ‘not of relevance to domestic needs’ (Huysmans 2006: 65). Immigration increasingly became a public concern in the late 1960s and 1970s, due in part to labour market changes and policies aimed at protecting domestic workers’ social and economic rights (Blotevogel et al. 1993 in Huysmans 2006: 65). Crisp (2003) writes that the economic crises of the 1970s resulted in a ‘very limited’ number of opportunities for legal South–North migration (2003: 7), as labour agreements between states were concluded; yet immigration continued, particularly through family reunification (Huysmans 2006). Applications for asylum also rose sharply from the 1970s (Koser 2002). Western European governments responded by clamping down on the availability of asylum (Boswell 2006), legislating migration quotas and adopting a preference for skilled
migrants (Baldaccini 2010; Castles 2002) (notwithstanding the continued demand for unskilled labour [Melossi 2003]). Similar restrictions on legal pathways to migrate and subsequent restrictions on asylum have been identified across many countries of the Global North, including Australia (Pickering & Weber 2006), Canada (Dauvergne 2004) and the US (Michalowski 2007). However, none have brought an end to the phenomenon of irregular migration (Bigo 2001). Indeed, as some have pointed out, national systems that do not provide ‘sufficient or efficient legal migration channels, may favour irregular migration rather than deter it’ (Baldaccini 2010: 116).

Mobility and its stratification, termed ‘global apartheid’ by Falk (1993: 629), are seen as defining features of globalisation (Bauman 1998; Tirman 2004; Wonders 2006). One of the dilemmas for states is how to make borders selective, yet remain business friendly (Andreas 2000). Globalisation has been described by Bauman (1998) as providing safe existence for some, and threatening law enforcement for others, who occupy the bottom rungs of the ‘global hierarchy of mobility’ (1998: 69). Bauman argues that while borders have been ‘levelled down’ for elites such as tourists and business travellers, other travellers face ‘walls built of immigration controls’ (1998: 89), referring to refugees, the displaced, asylum seekers, migrants and those without papers as the ‘waste of globalisation’ (Bauman 2004: 58). In his account, modernisation produces ‘human waste’ through order-building and economic progress. Order-building involves selecting parts of the population as ‘out of place, ‘unfit’ or ‘undesirable’. Economic progress involves degrading and devaluing previous modes of ‘making a living’, so as to deprive people of their means of making a livelihood (2004: 5). In earlier historical periods, ‘undesirables’ could emigrate or were forcibly exported to other parts of the globe that were not yet modernised, as in the case of United Kingdom prisoners sent to Australia in its early history. Globalisation, however, has created ‘redundant populations’ everywhere: people without adequate means of survival who can no longer be exported. For Bauman, this explains rising anxieties about ‘immigrants’ and ‘asylum seekers’, and the resulting action by governments towards securitisation:

Stripped of a large part of their sovereign prerogatives and capacities by globalisation forces which they are impotent to resist, let alone to control, governments have no choice but to ‘carefully select’ targets which they can (conceivably) overpower and against which they can aim their rhetorical salvos and flex their muscles while being heard and seen to be doing so by their grateful subjects. (Bauman 2004: 56).

As governments clamour for control in the face of perceptions of their diminished sovereignty, asylum seekers and refugees have become targets of governmental controls. These initiatives are popular with the voting public, and as Bauman (2011) recently described, the impacts on transnational migrant subjects are accepted as ‘collateral damage’. The reinscription of the state through migration controls has been a chief concern of criminologists.
Scholars of criminology have drawn attention to border controls aimed at reinscribing the state to address the perceived crises of authority, legitimacy and identity of sovereign states under globalisation (Bosworth & Guild 2008; Pickering 2005; Pickering & Weber 2006; Wonders 2006, 2007). In the context of Europe, Melossi (2003) argues that globalisation is creating the conditions for the resurgence of the criminalisation of migration by states. Melossi uses the term ‘resurgence’ because subjecting migrants to criminalisation and penalisation is one of the most ‘ancient and recurring features of the modern world’ (2003:371). Melossi argues that one aspect of globalisation has been the transfer of state sovereignty to regional institutions, such as the European Union. As a result, states are facing a crisis of national identity. A process of deindustrialisation is also occurring, whereby trade unions and formerly powerful civic institutions are diminished and emaciated. Melossi contends that this is exacerbated by the lack of a ‘public sphere’ in European political systems – an argument not developed here (Melossi 2003: 375; see also Bauman 2002: 102 on the ‘underinstitutionalized world of liquid modernity’). This vacuum of national identity is being gradually filled by new state identities that are centred upon anti-immigration (Melossi 2003). In the European context, it is argued that dissatisfaction over EU membership correlates with rising levels of racism and xenophobia (Melossi 2003: 376; Huysmans 2006; Fekete 2001, 2009). Fuelling this process is globalisation’s transformation of national and local market systems which is creating new avenues for both illicit and licit economic activity (Melossi 2003: 375). In these new markets, demand for a black market and illegal labour is increased and most often filled by migrants. Moreover, Melossi points to the high incarceration rates for migrants in European cities as evidence of socially constructed criminality and the structural discrimination against migrant populations (See also Fekete & Webber 2010; Wacquant 1999).

Government reassertions of sovereignty are bolstering the exclusionary and punitive policing of borders (Andreas 2003; Michalowski 2007; Pickering 2005; Weber 2006; Wonders 2006). Many criminology scholars link Garland’s ‘culture of control’ model to the proliferation of border controls (Pickering 2005; Bigo 2005; Bauman 2004; Weber 2006; Weber and Bowling 2008). Here, reassertion of sovereign power against transnational migrant subjects is reminiscent of the ‘law and order’ approach advocated by some governments, whereby increasingly punitive methods are adopted to bolster perceptions of the sovereign’s ability to control crime (Garland 1990, 1996). Garland (2001) argues that states are moving from a more inclusive community-focused ‘social state’, to the model of an exclusionary state, which embraces ‘criminal justice’ penal and crime control:

The penal mode, as well as becoming more prominent, has become more punitive, more expressive, more security minded ... The welfare mode, as well as becoming more
muted, has become more conditional, more offence-centred, more risk conscious. (2001: 175)

Border controls, including the increased use of detention and deportation, in addition to discourses that conflate security and irregular migration, constitute examples of this punitive application. The state is casting its gaze beyond its territorial boundaries, and is ‘focusing on the alien as a principal source of its social problems. The alien takes the form of the criminal, the poor, and the foreigner, who are often one and the same’ (Nevins 2001: 140). Similar to Bigo’s Mobius ribbon referenced earlier, Nevins here is relating how border controls are experienced differently by different observers; border controls are racialised (Yuval-Davis 1998; Guild 2005), gendered (Carpenter 2006; Wonders 2007; McDowell and Wonders 2009; Pickering 2011) and classed (Wonders 2006; Geddes 2000). This differential impact will be explored further in the next section.

Emerging criminological work on the border is mapping reassertions of sovereignty through the disaggregation of border functions to ‘de-localise the border’ (Salter 2004: 10; Pickering and Weber 2006; Weber 2006; Green 2006). This process is termed ‘border performance’ by Wonders (2006), whereby borders are socially, not geographically, constructed by the state in conjunction with various actors. Wonders argues that while states formulate policies on national borders, these policies are inconsequential until they are ‘performed’ by agents of the state or by the border crossers themselves (2006: 66). Those responsible for the performance can be geographically close to the border, like border police, or in locations distant from the border, such as social workers who decline to assist people classed as non-citizens. Additionally, these performances are ‘embodied’ – gendered, classed and racialised (Wonders 2006: 66).

Border reconstruction theory extends concepts of border performance to argue that social stratification is effected at the border. A border reconstruction project refers to ‘a variety of state-sponsored strategies designed to reinforce and/or reconstitute borders in response to challenges posed to nation-states and borders by globalization’ (Wonders 2007: 34). In Wonders’s formulation, these projects involve not only states and their agencies but also ‘major corporations, the business sector, and the media, and even, increasingly, ordinary citizens’ (Wonders 2007: 34). Border reconstruction projects are not new phenomena, but the ‘technologies of control’ that facilitate them, and the fervour with which they are implemented, are expanding (Pickering & Weber 2006; Wonders 2007). Wonders argues that border reconstruction projects create borders in three identifiable ways: through the physical reconstruction and enforcement of existing geographic borders; through the construction of ‘cultural and rhetorical borders’ that serve to divide citizens from non-citizens – that is, mechanisms pursued by media, government and vigilante groups that cultivate public fear and loathing towards particular categories of people; and through ‘smart borders’, which are unbound
by geographical limitations, such as the EU border and practices of rendition. Concepts of border performance and reconstruction illuminate the machinations of the nation-state when policing the border. They are an analytical tool for examining the intersection of globalisation and sovereignty with the securitisation of migration.

The securitisation of migration has both explicitly and implicitly made borders more selective and targeted in their policing of transnational migrant subjects. The racialised, gendered, extraterritorial and internal reach of border policing has prompted new theorisations of the border (Loader 2002; Bigo 2005; Hayes 2010; Weber 2006; Pickering 2005). Weber (2006) categorises borders as functionally mobile, spatially mobile, temporally mobile, and personalised. These definitions serve as a method for grouping the securitisation of migration practices. ‘Functionally mobile borders’ are borders that are not only enforced at express geographic locations but which also ‘transcend the constraints of physical borders and operate both outside and within them’ (Weber 2006: 24). Indeed, Weber posits that traditional geographic borders are no longer the primary site for migration control. Rather, public and private agencies combine to execute and police migration at a range of locations, via a range of methods, such as welfare-based surveillance, administrative detention and the dispersal of asylum seekers to regional areas. Further, pre-emptive measures typify functionally mobile borders. These may include interdiction, carrier sanctions, visa regimes, the external dimension of EU asylum and refugee policy, and other measures enacted in countries or regions of origin, such as offshore processing.

Weber borrows heavily from Australia’s refugee processing framework to illustrate the concept of spatially and temporally mobile borders. Spatially, Australia has excised great portions of land for the sole purpose of migration control (Grewcock and Green 2002; Edwards 2003; Grewcock 2003; Pickering 2005). For all other purposes – trade, fishing, customs and even detaining transnational migrant subjects – the Australian Government maintains these areas as within its control. Temporally mobile borders involve the retrospective application of laws to suit the government’s interest. In 2003, as Weber (2006) has discussed, a group of asylum seekers landed in the migration zone in Australia – an area that had not been excised. The government retrospectively excised the land and returned the group to Indonesia. Securitisation of migration practices can thus be mobile in both time and space (Weber 2006).

The final category for Weber is the personalised border, whereby individuals legally embody the border by enjoying the legal entitlement to cross it. Guild (2000: 228 in Weber 2006: 35) describes the UK as operating with entirely personal borders. This shifts the concept of entry to the UK from an actual physical arrival, to the time at which the consular officer grants the entry visa, as documented in an individual’s passport. Weber argues that ‘British borders can be conceptualised as fragmented and fully portable, their location defined not by sites of enforcement action by state officials … but in terms of the current whereabouts of certain
intending visitors’ (Weber 2006: 35-6). As Weber points out, entry for these individuals is likely to be encouraged and facilitated, while it is barred for ‘irregulars’.

Criminological scholarship is linking the impact of increased border control and securitisation to the corresponding increase in the risk of harm to transnational migrant subjects and fatalities posed by crossing borders (Grant 2011: Weber 2010; Weber and Pickering 2011; Michalowski 2007; Carling 2007). This phenomenon has been documented at migratory ‘fault lines’ around North America (Mountz 2010; Michalowski 2007; Carpenter 2006; McDowell and Wonders 2009; Andreas 2003; Jiminez 2009), Europe (Carling 2007; Weber 2010) and Australia (Weber and Pickering 2011; Pickering 2005) and is further examined later in this chapter. Enhanced policing of the border symbiotically increases the risk of harm to particular transnational migrant subjects.

**APPLYING THESE THREE APPROACHES**

The three critical approaches discussed above shape this inquiry into the gendered impact of the securitisation of migration. Tracing developments in international relations scholarship shows how a more nuanced understanding of sovereignty is imperative. Rather than sweeping generalisations of a ‘borderless’ world in which sovereignty is irrelevant, sovereignty has been transformed, with some powers strengthened and others weakened (Sassen 1996). The sovereign power to include and exclude people has ostensibly been reinforced. In addition, the framework adopted here implies that regionalisation is a useful prism through which to view this shift (Hirst and Thompson 1996) – an insight adopted in analysing the intersection between globalisation and sovereignty in the context of the EU.

Migration has been persistent throughout the centuries during periods of industrialisation, urbanisation and, more recently, globalisation. What has materialised under globalisation, however, is a battleground between mobility and the sovereign ability to control it (Castles and Miller 2002). Globalisation’s impact on migration is identifiable through several trends, but of particular significance is the emergence of a ‘global hierarchy of mobility’ (Bauman 2004). Globalisation is experienced differently according to one’s migration legal status within that hierarchy, which is racialised, classed and gendered. Even in the absence of direct causal links (Koser 2011), questions emerge about the interrelationship between the surge in border controls, the decrease in legal opportunities to migrate and the increase in irregular migration. Refugees, configured as the exception to closed states, are now subject to restrictions.

Finally, criminological scholarship has structurally shaped this research. Structurally, its key contribution has been to highlight the ways in which border and immigration control is being utilised to enhance the legitimacy of a sovereign state under globalisation. Governments in the Global North, suffering a crisis in national identity, have found relief in returning to a familiar law and order mantra (Garland 1996). Sovereign power has found expression in criminalising
categories of migrants, just as law and order campaigns have historically operated to target particular groups (Garland 1996). Criminological scholarship has begun to chart this impact on migrant populations. Empirically, this research is aimed at enhancing our understanding of the impact of the reinscription of the state through immigration control, and the way border crossing impacts on transnational migrant subjects and particularly women. The next section builds a framework through which to analyse changes to the border, mobility and security and the criminal justice responses that sustain it – deterrence, punishment and risk reduction.

THE SECURITISATION OF MIGRATION

Huysmans’s (2000, 2006) securitisation of migration framework has been adopted in this research to conceptualise the notions of, and interactions between, the border, security and migration. Within criminology, scholars have used various theoretical frameworks to understand transformations in sovereign power, expressed through the state’s reinvigorated powers to include or exclude transitional migrant subjects at the border. Such frameworks include state crime (Pickering 2005), ‘border performance’ (Wonders 2006), ‘border reconstruction projects’ (Wonders 2007), ‘global disciplinary strategies’ (McDowell and Wonders 2009), ‘governing through migration control’ (Bosworth and Guild 2008), ‘criminalisation of migration’ (Melossi 2003), ‘social injury’ (Michalowski 2007), ‘punitive pre-emption’ (Weber 2007), and ‘continuums of crossing’ (Pickering 2011). The framework of the securitisation of migration draws on scholarship that argues that neoliberal governance is producing new forms of governmentality by increasing perceptions of risk (Garland 2001; Foucault 1977; Buzan 1998; Bigo 2005). Huysmans’s overarching framework of the securitisation of migration has been adopted for this research as it encapsulates the existential threats produced by security knowledge significantly shaping policy on migration within the EU.

DEFINING THE SECURITISATION OF MIGRATION

Securitisation may be defined as discursive practices that produce an existential threat to which a security response is then required (Waever 1993; Buzan 1998; Bigo 2005). Securitisation is an extreme form of politicisation (Buzan et al 1998: 23). It relies on the production of a security threat that need not be tangible or evidence-based, but which is elevated to a priority over and above other issues (Bigo 2005). Processes of securitisation are self-referential (Guild 2008). Guild uses the metaphor of a balloon, such that the more you blow air into it, the larger it becomes. The government, seeking to control the ostensible security risk, invests resources and develops legislation to address perceptions of risk (Garland 2001). Often these threats are mobilised in order to justify extraordinary responses, such as the limiting of rights or the channelling of increased resources for the task (Buzan et al 1998).
Huysmans argues that securitisation uses many ‘techniques of government’ (Foucault 1991) to permeate migration, three of which are central. First, securitisation seeps into policy development and implementation. Second, securitisation is mobilised through political discourse that exaggerates the risks of migration and asylum, and either garners or diminishes allegiance to political parties. Third, securitisation constructs migration as a security problem and poses security solutions as the only viable remedy.

For the EU, migration and cultural identity constitute the ‘new security agenda’ (Waever 1993). Huysmans (2006: 64) has identified three themes that he argues comprise this ‘multidimensional process’ of securitising migration as Europe integrates: ‘internal security, cultural identity and welfare’ (Huysmans 2006: 64). Internal security entails the institutionalisation of police and customs cooperation, its expansion within and across Member States, and its current operation as a semi-autonomous structure that, in conjunction with governments, determines asylum and refugee policies. Cultural identity in this context refers to discourses that assume that homogeneity already exists within a nation-state, and thus present migration as culturally a ‘challenge to political and social integration’ (2006: 73). These discourses are an ‘important source for mobilising security rhetoric and institutions’ (Huysmans 2006: 73). Cultural identity is also reinforced through migration policies that have cultural consequences, such as legal preferences for skilled over unskilled labour which attract applicants from certain countries who possess tertiary or other recognisable qualifications. Finally, increased competition for access to welfare has initiated a political struggle which has turned asylum seekers and refugees into scapegoats. This section explores these themes and highlights the contributions of other scholars who use these concepts. Notably, applying the securitisation of migration framework with a focus on gender has received minimal research attention.

In the EU context, as mentioned previously, the securitisation of migration is manifest through deterrence, punishment and risk-reduction. Punishment primarily takes the form of administrative detention (Fekete 2009; Hailbronner 2004). Deterrence is exercised through strategies to reduce access to rights and entitlements (Bloch & Chimienti 2011). Additionally, criminalising the means of travel through people smuggling legislation typifies deterrence in securitisation of migration practice. Risk reduction is exemplified by policies to ‘police at a distance’ (Bigo & Guild 2005), also referred to as ‘remote control’ policing (Guiraudon & Lahav 2000). Analysis of these themes and the criminal justice practices underpinning them will follow an examination of the drivers of the securitisation of migration.

**DRIVERS OF THE SECURITISATION OF MIGRATION**

The establishment of the ‘Area of Freedom, Security and Justice’ – as the European Union is now known – is a reflection of the regionalisation of power under globalisation as described by
international relations theorists (Held et al. 2000). This project, which began as a strategy to promote economic cooperation to ensure the devastation caused by two world wars would not be repeated, has become increasingly focused on security and migration. Intrinsic to this process is the reconfiguration of ‘the border’ both within and outside the European Union.

European integration has fuelled the securitisation of migration in the European setting through the elevation of ‘illegal migration’ – phraseology that has come to include asylum seekers – to a security risk purportedly warranting regional-level policing and cooperation (Loader 2002; Huysmans 2006; Den Boer 1996; Grewcock 2002). Strategies aimed at reducing asylum applications and policing illegal migration became the priority of intergovernmental policing agencies largely from the 1970s (Grewcock 2002; Huysmans 2006). As discussed above, the economic recession of the 1970s brought an end to labour agreements between Western Europe and its sending countries which had benefited from rebuilding projects in Europe after World War II (Koser 2002; Crisp 2003). Until that time, two ways to legally migrate to Western Europe had existed: labour migration and asylum. Some say there were fewer refugees reaching Europe at this stage (Mole 2005), although statistics would not recognise the extent of ‘crypto refugees’ – those who could apply for asylum but used other channels such as labour migration (See Cuellar, Garcia-Sayan, Montano, & Diegues 1991; McMaster 2002). Those who did migrate as labourers were supporting the high demand for labour, or what Hathaway and Neve refer to as the ‘interest convergence’ (Hathaway & Neve 1997: 119). At the same time as asylum applications rose, the accessibility of air travel improved and conflict intensified in countries such as Argentina, Chile, Uganda and Vietnam, which brought more refugees to Europe (Geddes 2000: 28; Joly 1996).

These events occurred during the Cold War, although its ending in part led to the construction of ‘new asylum seekers’ as a problem. According to Chimni (1998), the Cold War was instrumental in entrenching certain stereotyping of ‘normal’ refugees – stereotypes that were at odds with the characteristics of the increasing number of asylum seekers who sought refuge in Europe at the conclusion of the Cold War. These ‘new asylum seekers’, who were fleeing conflicts in Africa, Latin America and Asia, were subject to ‘the myth of difference’ and treated with suspicion:

By producing the image of a ‘normal’ refugee – white, male, anticommunist – a clear message was sent to the population with regard to the ‘new asylum seeker’: that asylum seekers were here for no good reason, that they abused hospitality, and that their numbers were too large. (Frankenberg 1993: 370-71 in Chimni 1998: 357).

Rather than countries accepting refugees, which had been the norm during the Cold War, asylum seekers increasingly came to be treated with suspicion. Under the guise of security, rather than humanitarian considerations, intergovernmental initiatives mushroomed to deal with the increase in the number of people seeking asylum. The same agencies responsible for
developing policy responses to terrorism and drug trafficking assumed responsibility for addressing what was termed ‘illegal migration’ (Loader 2002; Koslowski 2001).

Initially, ‘illegal migration’ was tasked to intergovernmental bodies that operated with secrecy and under the influence of security professionals (Andreas 2000; Snyder 2000; Huysmans 2006). The first initiative in Europe was the Trevi Group, established in 1975 to develop strategies for a European police network to address illegal immigration, alongside policing drug trafficking and terrorism (Joly 1996; Grewcock 2002). The Trevi Group structure included national politicians but excluded the public policy-making institutions of the European community, such as the European Commission (Bhabha & Shutter 1994). The Schengen Agreement of 1985, supplanted in 1990 by the Convention applying the Schengen Agreement of 14 June 1985 (‘the Schengen Agreement’), had an explicit focus on strengthening systems against illegal immigration and promoting increased internal mobility for citizens of participating countries. The Schengen Agreement also established streamlined and restrictive asylum policies for those countries that signed it (Joly 1996). The Schengen Agreement rapidly accelerated policing cooperation among participating countries, who came to be united in adopting a common strategy to restrict asylum and curb what they saw as illegal migration (Bhabha & Shutter 1994).

The Ad Hoc Group on Immigration that followed the Schengen Agreement was charged with examining ‘the measures to be taken to reach a common policy to put an end to the abusive use of the right to asylum’ (Joly 1989: 367 in Joly 1996: 49). The Ad Hoc Group on Immigration became a very effective lobby group that argued strongly for harmonisation of restrictive immigration policy across Europe. Far from being ‘ad hoc’, the group met regularly and were systematic in their approach to promulgating restrictive immigration measures (Bhabha & Shutter 1994). Operating as an intergovernmental initiative, the Ad Hoc Group on Immigration was beyond the reach of democratic accountability mechanisms such as those of the European Parliament (Joly 1996). The Group’s efforts collectively served to reiterate the ‘impressions of insecurity’ posed by ‘illegal migrants’ (Huysmans 2006: 58). Contrary to the EU characterised by free movement for capital, goods and people foreshadowed by the Single European Act 1986 (Boswell 2006), citizenship has become one of the primary discriminating factors in determining how people experience the EU (Zaiotti 2010).

Security and legitimacy within the European Union

The European Union integration project is dependent upon securitisation discourses to promote its legitimacy (Grewcock 2003; Hayes 2010; Huysmans 2000, 2006). Grewcock (2003) traces the increasing dominance of security and border enforcement within the decision-making on the creation of the European Union. The 1992 Maastricht Treaty initially established the European Union as a structure consisting of three pillars. Each pillar contained various policy domains and the relevant pillar dictated the extent of supranational cooperation required. Matters in the Third
Pillar merely required intergovernmental cooperation so were effectively left to Member States to regulate. Immigration and asylum policy was initially placed in the Third Pillar, until the Treaty of Amsterdam in 1997.

The movement of issues of immigration from the Third to the First Pillar of the EU by the Amsterdam Treaty of 1997 cemented the security–migration nexus in EU affairs. Hayes (2006) characterises the EU as being a civilian organisation up until the Treaty of Amsterdam, after which it developed military capabilities. The Treaty of Amsterdam redefined the EU as the ‘Area of Freedom, Security and Justice’ (Grewcock: 2002: 121). This Treaty outlined the process by which the Schengen Agreements would transition from the Third Pillar to the First Pillar by 2004. In 1999, the European Council at Tampere formulated the essential elements of a Common EU Asylum and Migration Policy that reinforced its commitment to ‘the fight against serious organised and transnational crime’ (Grewcock 2003: 122). This approach enshrined the link between asylum and international crime and emphasised the need for EU-wide cooperation to address these issues. Member States were tasked with achieving consistency of asylum and migration policy as regards reception for asylum seekers, legal processes and definitions, a process termed ‘harmonisation’ (Boswell 2006).

Advocates for European integration have relied upon the establishment of a security zone that keeps out of the EU ‘criminals and irregular migrants’ to consolidate their agenda (Grewcock 2003: 121). After poor levels of public approval, demonstrated in the rejection by French and Dutch voters of the EU Constitution, and the defeat of the Lisbon Treaty by referendum in Ireland, the EU has been able to reassert itself through a security platform (Hayes 2010). The Lisbon Treaty eventually came into force in 2009, which dispenses with the pillar structure in favour of a system based on competencies, in which immigration and asylum remain a significant policy area for the EU (Hayes 2010). As Den Boer argues (1996: 5), the new security framework has provided a way to ‘guarantee the social legitimacy so badly needed by the Union’. Security policy is now a binding force within the EU, and is in turn fuelling the securitisation of migration.

*Extending the processes of the securitisation of migration to other nation-states*

The expansion of the EU is spreading restrictive securitisation practices across Member States and neighbouring countries of the European Union (Lavenex 1999; Düvell 2010; Watts 2002). As Hayes writes, ‘the buffer state approach of the early 1990s is being extended to a new “circle of friends”, part of preparations for the expansion of the EU to the east and south-east and the full accession of existing buffer states’ (Hayes 2004: 12). Through the abolition of internal borders and the creation of an external EU border, the EU is ‘being born at its borders’ (Snyder 2000: 222). The Schengen Agreements removed internal borders between participating Member States and created one external border. Southern EU Member States were placed under considerable pressure by the rest to improve their border controls before they could participate (Boswell...
2006). Italy, for example, had to improve its border controls and take a tougher stance on deportations before it was granted full membership in 1998 (Watts 2002). This tougher stance included strengthening police powers and creating immigration detention centres (Watts 2002: 140) – both reflective of the punitive dimension of the securitisation of migration policy. The wealthier countries of Western Europe have deputised Eastern Europe through a web of readmission agreements that smooth the way for Western Europe to conduct deportations to various states termed a ‘safe third country’ (Snyder 2000). These countries are unable to say no because of the impact on trade or other economic benefits (Bhabha & Shutter 1994; Vachudova 2000). Countries preparing to join the EU are under fierce pressure to comply, and thus securitisation envelopes these prospective Member States. The delegation of the control of borders from rich states to poor ones is a feature of the new EU (Snyder 2000: 221).

Individual EU Member States and EU institutions have cultivated bilateral and multilateral relationships with countries that are located along migratory routes in North Africa to effect pre-emption and bring about offshore border enforcement, turning the area around Malta into a ‘militarized Mediterranean’ (Fekete 2003). Bilateral agreements with countries of the Global South, such as that between Italy and Libya discussed in the previous chapter, illustrate the extension of processes of securitisation to other states through EU policy. Aside from bilateral agreements, pre-emptive offshore border controls include mandating visas and introducing carrier sanctions, the latter delegating responsibility to private companies (Guild 2005). Thus, the expansion of the EU is extending the reach of securitisation of migration processes to other nation-states that are in close proximity to the EU.

**September 11, 2001 – accelerating securitisation**

Notably, the terrorist attacks in the US, London and Madrid in the 2000s have accelerated the progress of the securitisation of migration already in place prior to these high-profile incidents (Bigo 2005; Loader 2002; Hayes 2010; Huysmans 2006; Bosworth and Guild 2008). Kapur (2005) argues that the events of September 11, 2001 and the subsequent ‘War on Terror’ have created a ‘heightened anxiety about the Other’, who is increasingly viewed as a threat to national security. An inability to define the target in the war on terror has led to the targeting of particular groups and communities (Kapur 2005). Kapur states that the War on Terror ‘has afforded more space for the representation of the other as a fanatic, both dangerous and opposed to freedom’ (2005: 134). This has not only involved the targeting of asylum seekers but also of existing migrant communities (Young 2003). These fears serve to dehumanise transnational migrant subjects and fuel support for the state increasing border controls to stop extra-legal mobility.

In Europe, the securitisation of migration has been primarily driven by European integration and the security threat understood as posed by irregular migration. Using Huysmans’s framework,
the next section explores the securitisation of migration in greater detail in relation to three themes: internal security, cultural identity and the crisis of the welfare state.

THEME ONE: INTERNAL SECURITY

The path to creating an internal EU market has precipitated a dynamic process of securitisation for an integrating Europe (Huysmans 2006: 69). Central to the internal security theme within the EU is the assumption that abolishing pre-existing internal border controls to enable the facilitation of ‘transnational flows’ of capital, goods, services and particular categories of people will pose a direct challenge to the rule of law (Huysmans 2006: 69). Huysmans argues that this construction is so familiar in the EU context it has ‘obtained the status of common sense’ (2006: 69).

EU policy on diminishing internal border controls coincided with policy on harmonising and strengthening external border controls. As referenced earlier, the Single European Act of 1986 envisaged the abolition of internal frontiers for goods, capital, services and people (Huysmans 2006: 70). However, this led to an increased emphasis in EU policy on controlling the external border, resting on the assumption that the external border is the chief site at which illegal migration takes place. This construction focuses on the impact of the act of crossing an external border irregularly, as opposed to visa ‘overstayers’ – a less visible category of irregular migrant, discussed in the last chapter.

In stark contrast to the aims of the Single European Act, internal border controls have in fact increased. In essence, the forecasted abolition of internal frontiers lent impetus to boosting external border controls, and some anticipated that this would lead to ‘fortress Europe’ (Bigo 1998). What it brought about was a dramatic increase in internal border controls, for example, through the administration of work permits and welfare payments. Curtailing freedom of movement internally and externally involves border controls being carried out by an increasing array of actors such as medical personnel, employers, airline operators, teachers, customs officers and police (Fekete 2011; Guiraudon & Lahav 2000; Tholen 2010; Weber 2006). Fekete (2009) has traced the expansion in legislation that involves public services agencies in immigration control. In the Swedish context, legislation limiting access to health care for particular asylum seekers has turned doctors, hospitals and nurses into ‘an extension of the Swedish Migration Board’ (Fekete 2009: 89).

Internal security took on heightened significance through the creation of an internal market. The illegal and criminal activities of diverse actors such as refugees, terrorists, immigrants and drug traffickers, came to be seen as occupying the same security continuum (Huysmans 2006: 70-1). Since the signing of the Maastricht Treaty, terrorism, international organised crime, drug trafficking, asylum and illegal immigration have all been addressed by the one policy package (Huysmans 2000). Huysmans states that ‘discourses of danger and security practices derive
their political significance from their capacity to stimulate people to contract into a political community and to ground – or contest – political authority on the basis of reifying dangers’ (Huysmans 2000: 757). Networks and organisations involving government officials and security professionals, such as the Trevi Club discussed above, have become separate but influential entities in bureaucratic institutions across Europe (Bigo 2002).

Research in both the US (Michalowski 2007; Wonders 2007), where immigration enforcement is termed ‘crimmigration law’ (Stumpf 2006), and Australia (Pickering 2001) has shown that this trend is not limited to the European Union. In the US context, Stumpf demonstrates how immigration and criminal law have converged, arguing that membership theory – the notion of a social contract between a government and its people – explains the convergence. In the US, the ‘crimmigration merger’ has occurred in three ways: substantive aspects of criminal and immigration law are increasingly overlapping – for example, the commission of an expanded number of criminal offences, even misdemeanours, results in mandatory deportation; immigration enforcement methods are on par with criminal law enforcement; and the procedures for hearing and determining breaches are akin to those used in the criminal process (Stumpf 2006: 12). Applying membership theory, Stumpf argues that in the crimmigration context, the state plays the role of a bouncer, possessing the power to evict non-citizens for either being non-members or for breaking membership rules. Importantly, those excluded tend to be racialised and from lower socioeconomic backgrounds. Criminal and immigration law are similar in that they involve relationships between the state and the individual and both centre upon exclusion and inclusion. Yet their differences are also instructive: criminal defendants who are citizens are afforded more rights than non-citizens (Stumpf 2006).

The securitisation of migration has led to the functions, policies and agents of external and internal security being increasingly merged (Bigo 2005; Hayes 2010; Loader 2002; Lutterbeck 2004; Pickering 2005; Weber 2006). The current regulatory approach to migration is shifting border and immigration policing from ‘low’ to ‘high’ politics (Andreas 2000), with territorial policing high on the agenda in North America (Andreas and Snyder 2000), the EU (Bigo 2006) and Australia (Pickering and Weber 2006). Previously, security processes within the EU were recognised as split at the external border – the external threat was addressed by the military and the internal threat by the police. As Bigo (2006: 391) writes, in the context of the EU:

We have witnessed a unification of the security process frozen during (or shaped by) the Cold War. The specialised agencies, whose missions reflect the idea of state sovereignty and the difference between inside and outside, have seen their attributions increasingly criss-crossed.

Indeed, this ‘unionisation’ (Bigo 2006: 397) of the interests of customs and border guards is described as having transformed the border. Many agencies - customs, border guards, police
with military status, intelligence services – now compete to play an elevated role in the security sphere (Bigo 2006: 392). Police cooperation between Member States has also increased in addition to the establishment of other (non-police) databases containing personal information, discussed further below.

Rather than describe internal and external security as binary opposites, Bigo (2006) argues that the fields of policing and the military have never been entirely distinct but their cross-over has not traditionally been recognised. Drawing on the role of the police in the Australian context since Federation in 1901, Finnane (2009) asserts that the police have always been involved in policing the internal border, and consequently that their involvement in immigration policing is not strictly a contemporary phenomenon. Bigo argues that at present it is in the interests of the security professionals to merge the fields of internal and external security; the focus has shifted to ‘intermediary’ agencies situated in between the police and the military (2006: 392). For this reason, Bigo prefers the terminology ‘a field of security professionals’ to denote the various actors and their efforts – police, intermediaries and military agencies.

Studies on the securitisation of migration have focused on the expansion of extraterritorial policing. Pickering (2005: 56) writes: ‘in the name of security, border policing has sought to ensure the protection of the nation through defensive policing at the border and internal to the receiving state, and offensive intervention in the sending nations’. To illustrate, prior to the recent unrest in Libya, the European Union and individual Member States had stepped up their cooperation with Libya over illegal migration to prevent people from arriving in Europe (Green 2006; Betts 2006; Gil-Bazo 2006). Foremost in attempts to address this flow have been bilateral agreements between Italy and Libya, discussed in the previous chapter, that provide for extraterritorial policing in Northern Africa, and in some instances even provide for the interdiction and return to Libya of individuals who arrive on the Italian island of Lampedusa (HRW 2009). The EU are reportedly currently trying to secure agreements with the transitional governments in Tunisia, Libya and Egypt (Maccanico 2011). As Pickering writes in the context of Australia, ‘the policing effort against people smuggling places it on the frontline of ensuring Australia’s refugee protection obligations are never invoked’ (2005: 58). The Mediterranean experience demonstrates that these non-arrival strategies are also being deployed to prevent EU Member States from exercising their obligations under the 1951 Refugee Convention.

Research on the securitisation of migration has also explored the changes in technological, military and financial resources invested in immigration policing (Pickering & Weber 2006). Policing of the border has been attracting an exponential increase in funding. In the European Union, the ‘Freedom, Security and Justice’ budget, which includes security and migration spending, was the fastest growing of all the budget areas in 2008 (Tholen 2010: 265): it grew by almost 17 per cent between 2007 and 2008, compared to overall budget growth of 2.2 per cent.
Various ‘technologies of control’ have been introduced under the guidance of security professionals, to boost police surveillance processes (Pickering and Weber 2006; Bigo 2005; Aas 2011). New technologies sort those who seek to cross borders into categories, with borders becoming ‘risk smart’ (Pratt 2005). As Weber and Pickering (2011) write:

The arsenal of exclusionary devices involves, in varying combinations: pre-emptive measures to prevent and deter unauthorised arrival (the external border); punitive responses, such as administrative detention, exclusion from essential services and forcible deportation (the internal border); and technologies that facilitate the efficient sorting of desirable and undesirable passengers at the physical border (Weber and Pickering 2011: 10).

This has involved policing the border with military apparatus (Andreas 2000; Carpenter 2006; Michalowski 2007; Hayes 2006; Fekete 2005). Moreover, satellite technology is now used to detect movement off the coast of Spain and the Central Mediterranean, tracing movement through North Africa (Bigo 2009). Military jets are used to carry out the deportations of transnational migrant subjects (Fekete 2005). Aas (2011) provides an inventory of all the surveillance processes introduced by the European community. Eurosur, the European Border Surveillance System, is not yet operational but is intended to create a technical framework for external border surveillance in the Southern Mediterranean and eastern EU borders, and lead to greater information sharing between Member States (Aas 2011). Of the various operational systems, two of the most relevant to this research are the Schengen Information System (SIS) and Eurodac.

Database information systems have mushroomed across Europe and fuelled interagency policing cooperation (Loader 2002). The SIS is an information system that allows information sharing between competent authorities in Member States. It is accessible to national police, customs and border authorities, and immigration officers. It can hold requests such as those issued by judicial authorities as to the whereabouts of an individual, and can also signify to a Member State that a discreet surveillance operation is required (Romein 2006: 30). The SIS can also identify when someone is subject to a deportation order or has applied for asylum in another Member State. It is not clear how people can challenge the veracity of the information in the SIS (Bhabha & Shutter 1994). This technology means that migrants will live in a constant state of ‘deportability’ even within the European Union (De Genova 2002). Development of the SIS II is underway (Aas 2011; Hayes 2006), to be charged with ensuring enhanced security and functionality, and the latest technology. Hayes (2006) has gone as far as labelling this situation a ‘security-industrial-complex’.

Eurodac is a surveillance system responsible for facilitating the Dublin II Regulation on asylum (Aas 2011). The Dublin II Regulation (EC 343/2003) and its predecessor, the Dublin Convention
1990, pool the refugee determination procedures of each Member State. Under the arrangements, an asylum seeker is permitted to apply for asylum in only one Member State, and Dublin II Regulation stipulates how that Member State is to be determined (Guild 2005). The implementation of the Dublin II Regulation is facilitated by the introduction into community law of a system for tracking people who arrive in the EU and apply for asylum, whereby their fingerprints are recorded in a central database, known as Eurodac (Aas 2011; de Zwaan 2006; Garlick 2006; Guild 2006; Hurwitz 1999). Since the introduction of Regulation 2725/2000, all applicants for asylum who are over 14 years of age must be fingerprinted (de Zwaan 2006; Hayes 2006). Eurodac is accessible by law enforcement officials all over the EU. The fingerprints of ‘irregular migrants’ can also be screened to ascertain whether or not they have applied for asylum. Under the operation of the Dublin II Regulation, a person can be returned to their first country of entry into the EU (Aas 2011). This system is responsible for a significant number of transnational migrant subjects being returned to Malta, as will be discussed in Chapter 9. While studies of the securitisation of migration have paid significant attention to concepts such as technology, the impact on gender is less well understood.

**THEME TWO: CULTURAL IDENTITY**

Cultural identity, and its protection and transformation, is a key issue connecting the ‘politics of belonging’ with migration (Huysmans 2006: 73). In the EU, migrants pose a direct challenge to the myth of cultural homogeneity that exists within Member States. As Bralo (2005: 119) argues, the ‘asylum debate is just an expression of a more complex identity crisis’:

> Asylum seekers are the convenient ‘other’ through which the host group defines itself. Every identity is a complex negotiation of who we are and who we are not. However, when we are no longer sure who ‘we’ are, the only way to define ourselves is through what we think we are not – the ‘other’. Simplified, the argument could be put as follows: if asylum seekers are criminals, bogus, lazy, scroungers, dirty and sick, the implication is that ‘we’ are the opposite. If they are coming here that means that we have something that they want – and we should better defend it or hold on to it.

The host group, the EU, sees asylum seekers as the convenient “other” through which it can define itself (Bralo 2005). Through this prism we see the emergence of selective and targeted re-bordering – a subject that has attracted considerable attention among criminologists. This section draws upon criminological scholarship to expand Huysmans’s contention that European integration is ambiguous in functioning to produce a representation of migration as a cultural danger, while also promoting migration.

To support his contention, Huysmans first asserts that EU policies have cultural implications related to restrictions on free movement. The common visa list for the EU illustrates the cultural
consequences of border control policies. Countries whose majority population is black or Muslim are required to obtain visas before coming to the EU (Guild 2005). The policy thus operates as a ‘colour bar’ (Balibar 2002: 78), producing inequalities in access to mobility (Cunningham and Heyman 2004). However, this policy fails to stop migration, instead driving people to adopt riskier methods of travel or seek the help of people smugglers (Weber and Pickering 2011; Michalowski 2007; Andreas 2003 Bowling and Weber 2008). This produces a gendering of the border in that only those who are physically able – described by Khosravi as able-bodied young men – stand a chance of surmounting these border controls (Khosravi 2010: 104). Thus, compulsory visa requirements demonstrate the cultural and gendered implications of securitisation policy.

Second, Huysmans argues that in EU policy, integration is simultaneously promoted and used to underscore the need for greater restrictions on immigration (Huysmans 2006: 75; see also Bigo 1996). Policies promoting integration are based on the assumption that cultural homogeneity pre-existed immigration – a contestable assumption in most Member States. Migration is constructed as a social and political threat to integration, or more accurately, assimilation. These discourses support the resolution that securitisation through the integration of Member States is the only logical response (Bigo 2002; Ajani 2009; Pratt 2005; Walker 2000). However, ‘security’ in this context is a loaded concept (Huysmans 2000).

Discourse analysis enables an unpacking of what is being presented as a security threat and how this connotation developed (Buzan, Waever, & de Wilde 1998). It can also reveal how official accounts of migration are provided within the state (Guild 2009: 7). Discourse is defined as:

not a thing or a conversation between individuals. Rather, the term refers to particular ways of collectively talking about, writing about, practicing or performing aspects of the social world around us. Discursive practices, and the languages they rely on, provide the themes that shape how reality is understood. (Neysmith & Chen 2002: 247)

In Europe, portrayals of a dangerous ‘other’ are being utilised to garner support for the relevance of the EU (Grewcock 2003; Loader 2002: 138). Pickering (2005) relies on Garland’s ‘crime complex’ to illustrate the point: fear and insecurity are seen to realign crime and social control in the hands of law enforcement and beyond the reach of social policy. This produces an anxiety among the population, experienced as a perpetual fear of victimisation.

The criminal is no longer the subject of treatment but the object of control. The criminal can no longer be transformed, therefore he or she must be contained, contained for the bad choices he or she routinely makes as designated by the increasingly anxious and frightened majority. Choice and order become the scaffolding for securitisation and crime control. (Pickering 2005: 189)
The EU’s approach has been one of policing risk – a subject to which this thesis returns later in this chapter. The mandatory detention of all those who arrive extra-legally in or around Malta can be seen as driven by political discourse which states that this unruly and dangerous population must be controlled/contained (Brown and Pratt 2000; Huysmans 2000; Malloch and Stanley 2005).

The third way in which European integration ambiguously represents migration as a cultural danger is in the approach taken to multiculturalism and racism. Within the EU, advocates for the enactment of a common asylum and migration policy argue that such a policy is important for countering the emergence of radical nationalism, xenophobia and racism (Guiraudon 1998 in Huysmans 2006). These notions hark back to a violent European past, to which a return is feared. As a result, there is a policy emphasis on campaigning against racism and xenophobia (Huysmans 2006: 76-77). The approach is ambiguous, however, in that EU migration policy ‘indirectly sustains nationalist, racist and xenophobic reactions to immigrants’ (Huysmans 2006: 76), as discussed above. Conflating threats to security with immigration has powerful messages that reverberate as real consequences for individuals, by contributing to a culture of suspicion of asylum seekers (Khosravi 2010). Cohen (2002) cites an incident in Glasgow in 2001 involving the violent murder of an asylum seeker after claims of ‘bogus’ asylum seekers were prevalent in the media. Migration scholar Khosravi experienced this first hand in Sweden, where he was shot by someone who was part of a series of racist attacks on migrants (Khosravi 2010). This has formed part of his work on transnational migrants embodying the border, developed further in this research.

Criminological scholarship can be used to extend Huysmans’s analysis of the securitisation of migration operating through EU policy. Analysis of the gendered impact of escalating border controls has highlighted the potential risks for women transnational migrant subjects. This issue is not addressed by Huysmans but has received treatment elsewhere. Fekete (2003) estimates that the most ‘perilous way to get into Europe is to be smuggled in by sea’ (2003: 2). Travel by sea involves heightened ‘exposure to death’ (Khosavari 2010), particularly for women for whom exposure and dehydration are the major causes of fatalities at the border (Jiminez 2009). Making the journey from Libya to Italy or Malta by sea exposes transnational migrant subjects to harm. Although migrant deaths at sea are not systematically recorded (a reflection of government priorities in this area [Weber and Pickering 2011]), it is estimated that around 10,000 migrants have perished in the Mediterranean over the past decade (ICMPD in Fischer-Lescano, Lohr, & Tohidipur 2009). Sea crossings in other areas are similarly dangerous. In 2007, an estimated 7 per cent of those crossing from the Horn of Africa to Yemen perished (MMTF 2009). However, a gender breakdown of these statistics is not publicly available.
In researching the border between the US and Mexico, Carpenter (2006) has highlighted how border policies and technologies of control are producing a more violent landscape for women. The militarisation of the border ‘provides an environment conducive to militarised rape’ (Carpenter 2006: 170; see also Falcon 2001). Although data on sexual violence is difficult to obtain, human rights groups argue that there is a high prevalence of sexual abuse of immigrant women by the border patrol agents of the US and that accountability mechanisms are weak (Luibheid 2002: 130). In addition to the potential risk of harm, border militarisation contributes to gendered discourses in constructing women as the ‘racialised enemy in the US’. Carpenter (2006) writes:

> While rape has always occurred along the border, especially as a ‘price’ for entry into the United States, the militarisation of the border contributes to the ideology of immigrant women as a racialised enemy in the United States environment of ‘us versus them’. (2006: 171)

The construction of women as the racialised enemy ‘other’ is ignited in discourses that portray Mexican women as ‘idle welfare-dependent mothers and inordinate breeders of dependants’ (Chang 2000: 4). Denied agency, migrant women are thus cast as hostile to the state, reinforcing and functioning to justify border militarisation between the US and Mexico. Applying Huysmans’s framework to the experience of transnational migrant subjects draws into focus the gendered impact of the securitisation of migration, further examined by this research.

**THEME THREE: CRISES OF THE WELFARE STATE**

Huysmans’s third theme is the representation of refugees and migrants as having no legitimate right to social and welfare benefits. In this regard, access to social and economic rights is a way of mediating belonging (Huysmans 2006). Since the 1970s, immigration in Europe has featured in debates around the crisis of the welfare state (Robert 2002 in Bauman 2004: 55). As Huysmans writes, this resulted in an increase in ‘welfare chauvinism’ (2006: 77). The exclusion of third-country nationals from accessing welfare has extended this policy to all migrants, regardless of their legal status (Geddes 2003). The portrayal of migrants as abusing welfare has been used to legitimate state moves to limit their access to welfare benefits, and curb asylum (Minderhoud 2007 in Bigo 2009: 298).

The application of welfare chauvinism has been documented in the UK setting, where reduced access to rights and entitlements forms part of the state’s deterrence policy (Bosworth and Guild 2008). In the UK, asylum seekers are prevented from working and receive 70 per cent of the benefits that Britons on social welfare receive, an amount that is administered through vouchers. This equates to the receipt of between £34.6 and £40.22 per week, or £62.07 for a couple – amounts that are inadequate (Athwal & Bourne 2007). Restrictions on reception conditions,
policies upon arrival, illustrate a strategy of deterrence, aimed at addressing what the government perceives are incentives to reach the UK and apply for asylum (Bosworth & Guild 2008).

Refugees and asylum seekers are the scapegoats in broader debates within the EU over the future of the welfare state. Access to welfare has become more competitive, and the erosion of rights not only to welfare but also to employment reflects a trend towards the marginalisation of asylum seekers, refugees and migrants. Arguments in support of migration that highlight the shrinking population and the need for workers to support an aging population struggle to be heard against the noise of claims of restriction and reduction in the name of deterrence.

SECURITISATION OF MIGRATION: THE MERGING OF ‘OLD’ AND ‘NEW’ PENOLOGY

For criminologists, discourses, policies and practices of the securitisation of migration have a particular resonance; familiar criminal justice responses are deployed by governments and a growing transnational network of non-government actors (Weber & Bowling 2004) to address the perceived growth in crime and insecurity. In managing illegal migration, both old and new forms of penology inform the responses adopted by governments across the globe. Traditional or ‘old’ frameworks of penology reflected in the securitisation of migration are comprised of deterrence and punishment. These approaches rely upon the notion of a rationally acting individual who will respond to the threat and actualisation of punishment. New penology techniques shift the way crime is governed (Simon & Feeley 2003); they consist of risk-reduction strategies based on actuarial thinking and are designed to prevent risk, predominantly through incapacitation (Feeley & Simon 1994). Adopting the phraseology ‘punitive pre-emption’, Weber (2007) asserts that the ‘old’ and ‘new’ modes of penology are increasingly merging within immigration policing to form an integrated model, repeating Johnston and Shearing’s (2003) arguments that neither the ‘new’ or ‘old’ penology exclusively dominates.

OLD PENOLOGY – DETERRENCE AND PUNISHMENT

Turning first to discuss deterrence, the securitisation of migration applies theories of deterrence in attempts to control and influence the mobility of transnational migrant subjects. The threat of punishment lies at the core of theories of deterrence (Nagin 1998), as explained by Zimring and Hawkins:

Punishment can make some people, who otherwise would have been willing to commit crimes, fearful enough of punishment to avoid it by refraining from committing crimes. When punishment of a particular person causes that person to subsequently refrain from crime, it is called ‘specific deterrence’ and when punishment of criminals in general
causes people in general, punished or unpunished, to refrain from crime, it is called ‘general deterrence’. (Zimring and Hawkins 1973 in Kleck 2003: 292)

Deterrence hinges upon perceptions of the risk of punishment: without such a perception there can be no deterrent effect (Zimring & Hawkins 1973). However, deterrence has a questionable impact on actual behaviour (Achen & Snidal 1989). Deterrence has attracted criticism from ‘welfare state criminologists’, who have argued that a range of other underlying factors drive crime and therefore a legal threat of punishment is meaningless (Garland 1996: 187).

In relation to migration, deterrence is exemplified by the criminalisation of the means of migration, and the dilution of the rights and entitlements of asylum seekers and refugees upon arrival. The latter has been illustrated already in the context of the UK, where conditions for asylum seekers have been documented to include limited access to rights, poor housing, limited access to health care, isolation and stress (Bloch & Chimienti 2011). Significant penalties have been introduced to punish the agents who transport people to the EU to apply for asylum. The legal framework designed to prosecute and deter smugglers comprises two main protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention Against Transnational Organised Crime (the Palermo Protocol) (Askola 2009; Segrave, Milivojevic, & Pickering 2009); and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the UN Convention against Transnational Organised Crime. The latter protocol focuses on criminalising illegal immigration by organised groups (Di Nicola 2005). The increased use of people-smuggling networks is a consequence of restrictions on migration (Koslowski 2001; Koser 2006; Michalowski 2007; Nathwani 2003; Andreas 2003; Grant 2010). For many, this is the only way to get out of their country or region of origin to seek asylum (Khosravi 2010; Morrison & Crosland 2001). Reliance on people smugglers has reinforced suspicions about asylum seeker populations ‘through a process which criminologists will recognize as deviancy amplification’ (Weber and Bowling 2004). Deviancy amplification works in an opposite way to ‘defining deviance down’, which in a criminal justice context has been shown to promote more effective outcomes in terms of crime control (Moynihan 1992 in Garland 1996).

Punishment

Punishment for ‘crimes of arrival’ (Webber 1996) is utilised in the securitisation of migration as an authoritative intervention designed to reinforce sovereignty (Garland 1996; Foucault 1977). Punishment in relation to border control is not explicit but is enacted through administrative policies and practices that in effect result in punishment. The chief example discussed here is administrative detention. It is acknowledged that detention serves other purposes including deterrence, but its representation as an instrument of punishment is examined here. The ‘crimes of arrival’ committed by transnational migrant subjects who arrive at the border and seek asylum
are understood to be an affront to the community, for which they must be punished. Punishment scholars note that it is 'in times of high insecurity that the myths of crime and punishment are most effective, that the most punitive responses are evoked' (Freiberg 2001: 269). In the current moment, states and other agencies are fuelling perceptions of increasing insecurity to reassert their sovereignty in the globalising era (Wonders 2006; 2007), creating fertile ground for more punitive responses. The expansion in the use of incarceration has been documented elsewhere (Mathiesen 1990; Christie 1993: Scraton & McCulloch 2009). Securitisation of migration policies have extended the application of penal populism to asylum seekers – a practice described as more pernicious given that asylum seekers are without the checks and balances available to citizens within the criminal justice system (Bosworth and Guild 2008).

Administrative detention has become the cornerstone of the securitisation of migration policy for most Member States of the EU (Bloch & Schuster 2005; De Giorgi 2010; Fekete & Webber 1997; Malloch & Stanley 2005; Melossi 2003; Weber 2010). Monitoring of detention is inadequate in the EU, with a lack of reliable data on the number of people in detention (De Giorgi 2010). Malta’s policy of mandatory detention allows for the incarceration of detainees for a maximum of 18 months. Reflecting the dual purposes of detention in this context, the Maltese Government imposes mandatory detention as a deterrent policy (Abela 2011), yet the policy also acts as an instrument of punishment by exposing people to deplorable conditions, in addition to taking away their freedom of movement (MdM 2007; MSF 2009b). The UNHCR believes that Malta’s policy is the strictest in Europe by a considerable margin (UNHCR 2005a). The Maltese Government argues that its mandatory detention policy is based on ‘the national interest and more specifically, for reasons concerning employment, accommodation and maintenance of public order’ (MJHA & MFSS 2005: 6). Malta’s mandatory detention policy reflects the narrative that transnational migrant subjects who arrive by boat have committed a crime and are dangerous (Brown and Pratt 2000; Huysmans 2000; Malloch and Stanley 2005). It also removes any opportunity for transnational migrant subjects to interact with the local population to directly challenge this perception. This punitive policy is a ‘criminology of the alien other which represents criminals as dangerous members of distinct racial and social groups’ who are unlike ‘us’ (Garland 1996: 461). These policies reverberate widely; the European Commission against Racism and Intolerance criticised the Maltese Government for ‘seriously reinforcing perceptions of immigrants as criminals and increasing levels of racism and xenophobia among the general population’ (ECRI 2008: 27).

‘NEW’ PENOLOGY – RISK-REDUCTION TECHNIQUES

Aggregate risk reduction has become a dominant paradigm within criminal justice discourses, objectives and techniques (Feeley & Simon 1994). Risk reduction as a ‘new’ penology was formerly seen by some commentators as overtaking the ‘old’ penology of punishment and
deterrence (Feeley & Simon 1992; Feeley & Simon 1994). A ‘risk society’ (Beck 1992) is one in which the threat of a catastrophe propels action towards ameliorating risk. This paradigm involves taking steps to prevent aggregate risk by ‘fixing’ risks before they materialise (Leman-Langlois & Shearing 2004). Techniques of calculating the risk of crime, also referred to as ‘actuarial justice’, have been used to drive policy aimed at reducing risk. For Feeley and Simon (1992), this new penology explains the increase in incarceration rates which are unmatched by the modest increase in reported crime and the decrease in victimisation rates. This new penology represents a move away from an ‘individualised criminal process to an actuarial system’ of managing crime (Simon & Feeley 2003: 91). As such, risk reduction is closely linked to ‘situational crime prevention’, a popular crime control strategy among neo-conservative governments (O'Malley 2003b), and a typical ‘rationalist’ approach to crime policy (Garland 1990). The technical approach to risk reduction in relation to migration, however, has not involved community participation as is the case with some crime prevention strategies, but has been adopted in the securitisation of migration policy to disaggregate the border and prevent transitional migrant subjects from entering the EU.

The ‘new’ penology of risk reduction places greater emphasis on classifying, sorting and managing ‘dangerous’ populations, compared to the old penology’s focus on guilt, process and intervention or treatment (Feeley & Simon 1992: 452).

Rather than waiting for trouble to occur and then blaming the troublemaker, these technologies encourage proactive responses, the aim of which is to prevent trouble arising. (Shearing & Johnston 2005: 30)

As Feeley and Simon (1994) have noted, risk-reduction strategies have acute cultural consequences; for example, in the US actuarial justice techniques have targeted the black and Hispanic populations. Those targeted by risk reduction are deemed unable to be vehicles for deterrence and can therefore ‘be governed only through incapacitation’ (O'Malley 2003a: 45).

Exploring the similarities between new penology and the securitisation of migration, several manifestations are apparent. First, visa restrictions and carrier sanctions (Guild 2005) (to which I return in greater depth in the next chapter) combine to prevent transnational migrant subjects seeking asylum from gaining a visa to enter the EU. Second, interdiction at sea (Weber 2006: 28, 2007) (to which I also return in the next chapter) involves intercepting boats and taking them back to their point of disembarkation without investigating the refugee protection claims of those on board. An aggregate risk assessment judges those on board to be illegal, thus precluding their entry to the EU. Finally, the dominant paradigm of risk reduction is evident within US border control policy, as evidenced by the construction of walls and the militarisation of the physical geographic borders (Fan 2008). This has also occurred in the EU, where physical borders have been reinforced and militarised, presenting what Brown (2010) has called an image of ‘sovereign
state power in the face of its undoing’ (Brown 2010: 25). These risk-reduction strategies have variously been referred to elsewhere as policies of non-entrée (Shacknove 1993); functionally, spatially and temporally mobile borders (Weber 2006); ‘remote control’ policing (Guiraudon & Lahav 2000); and ‘policing at a distance’ (Bigo & Guild 2005), ‘neo-refoulement’ by Hyndman and Mountz (2008), or the ‘architecture of enmity’ by Gregory (2004). They refer to policies and practices that aim to stop, prevent and disrupt the transitional migrant subject from leaving their country of origin and entering the EU. These new forms of penology, although logically compelling, have a questionable impact on behaviour.

In terms of the old penology, migration is constructed as a rational choice to be ‘deterred by rapidly expanding preventative infrastructures’ (Bosworth and Guild 2008: 711). These preventative infrastructures taken collectively, enforce punitive pre-emption. Illustrations of punitive pre-emption in the Australian setting include practices of interception, interdiction, and offshore processing and detention (Weber 2007). The aim of both the ‘new’ and ‘old’ penology is to dissuade transnational migrant subjects from crossing borders to enter the EU. However, scholars have observed that these policies are failing to deter, and are instead exposing those who cross borders irregularly to increased harm and risk (Weber and Pickering 2011, Michalowski 2007), as discussed above. The application of such policies in the Maltese context, and their impact on women, is the subject of this inquiry.

**CONCLUSION**

New conceptualisations of the border have rapidly evolved as a result of globalisation and securitisation. Globalisation has unbundled traditional notions of sovereignty as attached to territory, and brought about a partial shift in some aspects of sovereignty (Sassen 1996). Far from contributing to the erosion in the nation-state, sovereign power is being reasserted in reinvigorated displays of border control. In some contexts, such as the EU, this is occurring at both a regional and national level.

This chapter has outlined how European integration has driven the securitisation of migration across the EU and further afield to neighbouring states. This process has placed the issue of asylum on the same security continuum as terrorism and drug trafficking. The emphasis on security is in many ways binding the EU and boosting its legitimacy, without an evidence base to support this agenda, as this chapter has argued. Securitisation of migration can be seen as comprising three themes which illustrate its permeation into the discourses, policies and practices adopted within the EU. Under the first theme – internal security – the ‘field of professionals’ involved in securitisation has dramatically increased and the interests of policing and military agencies have become far more aligned. The second theme – cultural identity – has seen ambiguous policies which support the cultural significance of the border and limit the free
movement of particular racial and social groups, while at the same time promoting anti-racism. EU policy has cultural implications – specifically that it sustains public portrayals of asylum seekers, refugees and migrants as risky, dangerous groups. Moreover, it has relied upon a discourse that poses migration as a political and social challenge to integration, perpetuating the myth that the EU was culturally homogenous until recently. The third theme highlights the link between competitive access to welfare and the scapegoating of asylum seekers, refugees and migrants. Legitimate rights to social benefits are undermined and access to employment is reduced despite migrant labour being in high demand. These themes capture the construction of migration as a security risk, and sustain targeted re-bordering.

Exploring the key tenets of the securitisation of migration from a criminological perspective brings to light the combination of old and new forms of penology. Deterrence is exemplified by the reduction in benefits and entitlements available to asylum seekers and refugees, and the criminalisation of the means of arriving in the EU through people-smuggling legislation. While administrative detention also serves a deterrent purpose, its role as an instrument of punishment is the most relevant to this study. Administrative detention has become the cornerstone policy of governments seeking to curb irregular migration to the Global North. Detention is an expression of sovereign control over distinct racial and social groups, and reinforces portrayals of asylum seekers and refugees as dangerous. Rapidly expanding policies on externalisation and non-arrival, what I term ‘regimes of non-entrée’ and which will be examined in the next chapter, typify policies of aggregate risk reduction, illustrative of the ‘new’ penology. These overlapping policies, characterised as belonging to both the ‘new’ and ‘old’ penology, have been shown to increase the risk of harm to transnational migrant subjects, precisely because they do not deter.

The theoretical grounding presented in this chapter enables greater clarity in addressing the key research question under investigation, on the impact of the securitisation of migration on refugee women’s experiences. This research will draw on these concepts of internal security, cultural identity and welfare chauvinism to analyse the tension between legal frameworks of refugee protection and the securitisation of migration. The tensions between these two legal frameworks are conceptually analysed in the next chapter, before turning to the analysis of the empirical data in the subsequent chapters.
CHAPTER 5: REFUGEE PROTECTION AND THE SECURITISATION OF MIGRATION – A GENDERED ANALYSIS

Legal protection for refugees, enshrined in international, regional and domestic law as the exception to a sovereign’s right to exclude non-citizens from unauthorised entry, has come under mounting pressure in the context of the securitisation of migration. This chapter begins with a gendered analysis of refugee protection, before turning to examine how securitisation, as delineated in Chapter 4, has transformed refugee protection. Scholarship on gender and refugee protection is a growing field. However, the bulk of this scholarship is focused primarily on the legal struggles involved in having claims of gender-specific or gender-related persecution accepted by courts and tribunals in the Global North.

Conceptually and analytically it is important to highlight the key tensions between legal frameworks of refugee protection and the securitisation of migration before discussing the empirical data on which this research is primarily based. All the women interviewed for this study applied for asylum in Malta and are therefore not only exposed to but must also live these tensions. This chapter’s socio-legal account of these tensions provides a structural analysis that raises conceptual questions for the ensuing chapters on women’s experiences at the local level across exit, transit, arrival and onward migration. The securitisation of migration, with its emphasis on deterrence, punishment and risk reduction, seemingly contradicts principles of refugee protection that contemplate the transgression of international borders and are based on the non-penalisation of illegal entry. Legal obligations to provide refugees with access to rights and entitlements and not to commit refoulement also seem to be tenuously observed in the increasingly punitive environment in which refugee protection now exists. Alongside deterrence, the most popular strategy adopted by states for dealing with transnational migrant subjects appears to be risk reduction through practices of warehousing – that is, clustering those who seek protection in their country or region of origin and preventing their ‘secondary migration’ (Smith 2004; Oelgemöller 2010). The problematic construction of ‘secondary migration’ is analysed by Oelgemöller, an analysis to which I later return. Recognition of the tensions between conflicting legal frameworks shapes the analysis chapters that follow by raising important conceptual questions that can be analysed separately in the context of exit, transit, arrival and onward migration. This chapter interrogates these tensions with a particular focus on the gendered dimensions of each one – a subject that to date has not been adequately considered in the literature on refugee protection.

THE REFUGEE PROTECTION LEGAL FRAMEWORK

Although the concept of refugee protection has origins dating back many centuries (Joly 1996; Sassen 1999), it is only in the last century that it has evolved into an internationally recognised
legal status (Goodwin-Gill & McAdam 2007; Goodwin-Gill 1995; Hathaway 2005; Robinson 1998: 5). The 1951 **UN Convention Relating to the Status of Refugees** (the 1951 Refugee Convention), together with its amending 1967 **Protocol**, are the main sources of international refugee law. Globally, 144 nations were party to one or both of these conventions as at June 2011 (UNTC 2011). The provisions of the 1951 Refugee Convention have been incorporated into regional frameworks in Latin America, Africa and the ‘Area of Freedom, Security and Justice’ that is the EU. Signatories to the 1951 Refugee Convention have also enacted national legislation to establish their own refugee protection legal frameworks, as was undertaken by Malta in 2002 (Pickering & Gerard 2011).

The international refugee protection framework operates to provide a remedy for illegality for certain transnational migrant subjects (Coutin 2005). The 1951 Refugee Convention provides individual legal status for a ‘refugee’, defined in Article 1A as applying to any person who:

- owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

Article 1A has been criticised for its overly narrow definition, reflecting the dynamics of post–World War II Europe (Chimni 2004; Mole 2005). The 1951 Refugee Convention aligned with the Cold War politics of the period insofar as it defines refugees in relation to states persecuting groups in a discriminatory manner (Markard 2007). The definition fails to include gender as a recognised basis for persecution, and does not apply to natural disasters or ‘people fleeing war’ (Bhabha 2004: 234). In response, some have taken to expanding the definition. To illustrate, the Organisation of African Unity has extended its definition of a ‘refugee’ to cover every person who ‘owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’. The limited definition provided in the 1951 Refugee Convention has prompted the incorporation of broader definitions in some international regional agreements.

In principle, the international refugee protection framework contemplates transgressions of national immigration laws. One must cross an international border to become a refugee. The

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2 Protocol Relating to the Status of Refugees, January 21, 1967. This protocol removed the geographical and time limits that had restricted asylum to those fleeing conflict in Europe at the end of World War II.
3 Convention governing the specific aspects of refugee problems in Africa, 10 September 1969. Article 2.
1951 Refugee Convention expressly provides for this scenario in three key ways: non-penalisation for illegal entry (Article 31), the prohibition on refoulement (Article 33), and access to rights and entitlements following recognition as a refugee (see Chapters III, IV and V of the Convention). However, the 1951 Refugee Convention stops short of providing a ‘right to asylum’, (Bhabha & Shutter 1994; Lauterpacht & Bethlehem 2003). The Universal Declaration of Human Rights does provide the right to ‘seek and enjoy’ asylum (Article 14), although this declaration is nonbinding.

As the previous chapter highlighted, the securitisation of migration has implicated asylum seekers and refugees. The most controversial aspect of the refugee protection framework is the obligation it places on states to process and potentially recognise refugees who cross their international borders. A successful determination of refugee status operates to partially nullify state sovereignty (Dauvergne 2008; Pickering 2005). Some scholars observe governments are displeased by this aspect of refugee protection, in response developing policy aimed at restricting access to asylum (Aleinkoff 1995; Bosworth & Guild 2008; Crock 2003: 48; Hathaway & Neve 1997; Pickering 2005; Weber & Bowling 2008; Weiner 1996). Other scholars explain the push by some states to restrict access to asylum as evidence of ethnocentrism, or an aversion to asylum seekers from the Global South (Chimni 1998; Fekete 2009b). Hathaway and Neve (1997) write that governments have two primary complaints about the 1951 Refugee Convention. First, they feel it forces them to relinquish migration control and accept the costs that flow from granting asylum. Second, the costs associated with adjudicating and deciding upon individual claims are burdensome. This led Hathaway and Neve to conclude that refugee law is in crisis, as it can no longer achieve its fundamental purpose: ‘balancing the rights of involuntary migrants and those of the states to which refugees flee’ (Hathaway & Neve 1997: 116). This imbalance is encapsulated in five main tensions explored later in this chapter. The next section examines the existing literature on gender and refugee protection.

GENDER AND REFUGEE PROTECTION

The legal struggles faced by women in having their claims of gender-specific or gender-related persecution accepted by courts or tribunals in the Global North is the focus of the majority of scholarship on gender and refugee protection. In the main, this research has precluded empirical analysis and has instead been based on the analysis of court documents (Bacon & Booth 2000; Haines 2001; Hunter 2002a; Kneebone 2005; Macklin 1995, 1998; Pickering 2005, 2011; Sinha 2001).

The literature on gender and refugee protection fails to account for the number of women asylum seekers and refugees, and their characteristics (Pickering 2011; Kapur 2005; Bhabha 2004). Global trends are therefore difficult to decipher. It is difficult to access information on how many
women are travelling with partners or alone, and how many with and without children. As Bhabha (2004) writes, data collection on women refugees is unsystematic and data is incomplete. There is also a lack of disaggregated data, with women often being conflated with children (Bhabha 2004; Spijkerboer 2000). Frequently the claim is made that women comprise up to 80 per cent of the world’s refugee population, yet these statistics refer to women and children interchangeably (Spijkerboer 2000: 15-16). The statistics that are available fail to portray a complete picture of gender and refugee protection, although they do raise some interesting questions around discrimination in access to protection.

Studies of women’s experiences of other stages of refugee experience, outside the courtroom, have been minimal, but this area is gradually gaining more attention in the literature. This includes the gendered impact of conflict, which is being explored particularly within the discipline of medicine (Amowitz et al. 2002; Swiss et al. 1998). Women are recognised as targets of sexual violence due to their role in the production and reproduction of identity (Haines 2001: 335; Crawley 2001: 89-90). There is a growing understanding of issues of gender in relation to transit migration in refugee camps (HRW 2009a, c; Turner 1999), and in transit countries more generally (AI 2010a; Hamood 2006; HRW 2009b; JRS 2009). Much of this research, however, is produced not by academics but by non-government or international organisations. Importantly, academic research is making a significant contribution in analysing how gender shapes access to developed countries for asylum seekers (Bhabha 2004; Bhabha & Shutter 1994; Kneebone 2005; Pickering 2011; Spijkerboer 2000; WING 1985), and the protracted processes around gaining refugee protection (Pickering 2011). This section will explore the key contributions of critical legal and feminist theorists, and analyse the literature on gendered access to refugee determination procedures.

GENDERED ACCESS TO REFUGEE DETERMINATION PROCEDURES IN THE GLOBAL NORTH

The geographic distribution of refugees is highly gendered (Bhabha 2004). Statistics indicate that women are overrepresented in countries to which they have fled which neighbour their country of origin (Bhabha 2004: 232). Correspondingly, Bhabha uses UNHCR statistics from 1996 to make the claim that women are underrepresented in the developed countries where applications for asylum are determined (Bhabha 2004). More recent UNHCR statistics from March 2010 indicate that there were 208,053 women and children (classified as under 18), out of a total refugee population of 267,844 (HRW 2010). However, these statistics merge women and children – thus obscuring the real numbers of women (Bhabha 2004). According to Eurostat statistics for 2010, 5550 women and 8790 men applied for asylum in EU Member States; men therefore comprised 63 per cent of the total number of applicants. These figures confirm that women are underrepresented in asylum application processes in EU countries.
Factors unrelated to the risk of persecution explain the underrepresentation of women asylum applicants in developed countries. Research has shown that women who do have claims for asylum are often from countries in which there are numerous barriers preventing them from exiting to seek protection (Musalo 2010). Women are often primary caregivers for children or extended family members, and may have to make difficult decisions about leaving their family or exposing them to the journey. Women’s access to resources within the family is also an issue that might make it impossible for them to establish the means to flee (Musalo 2010).

Reduced access to the formal and informal structures that facilitate migration (state agencies, travel agents, smugglers, family funding), together with dependent family status, resource inadequacy, personal history and social positioning, which militate against a self-perception as an autonomous asylum seeker, are likely to be powerful impediments to individual flight. (Bhabha 2004: 235)

Some scholars see the issue in terms of an amalgam of psychological, cultural and financial impediments that make women less able than men to flee persecution and seek asylum in the Global North (Macklin 1995). Bhabha (2004) asks whether the recent rise in the number of women seeking asylum points to a shift in these access issues which has made it easier for women to travel and seek asylum. As yet no longitudinal studies have addressed this point. Yet gendered research on exit suggests that women face particular difficulties in fleeing their countries of origin to seek protection.

Emerging research on the prevalence of gender-based violence during the journey to access legal protection in the Global North indicates that such violence has a significant influence on women’s mobility (Pickering and Gerard 2011: 61-62). Women’s experiences of violence do not end as soon as they cross international borders (HRW 2008, 2009c; Pickering & Gerard 2011). Rather, women refugees ‘risk rape by soldiers’, some are forced into sex work and many endure domestic violence from male family members (Bhabha 2004: 245). Research on the US–Mexico border has documented how the militarisation of border protection has increased women’s exposure to violence as they cross borders (Carpenter 2006; Falcon 2001; Luibheid 2005). Moreover, the conflation of crime and migration increases the costs of securing pathways to migrate for asylum seekers, and increases reliance on people smugglers and the use of more dangerous and riskier migration routes (Michalowski 2007). This all has particular ramifications for women:

the criminalisation of migration, including asylum seekers, exacerbates these difficulties; as the costs of commercial assistance with migration to secure asylum increase, so women, given their general socio-economic disadvantage, are disproportionately excluded, unless they use sex work as a way in. (Bhabha 2004: 242)
In making reference to sex work, Bhabha is touching on an area that she says has ‘just about eclipsed all others in the migration field over the past few years’ (Bhabha 2007: 25). It is not the intention to engage with this argument here. However, the resort to sex work does point to the very narrow avenues (whether legal or illegal) available to women to cross borders. Women transnational migrant subjects face gendered risks and exposure to violence when irregularly crossing borders as a result of the increased securitisation of migration.

Research on transit highlights how the lack of accessible social and economic protection is propelling onward migration (Düvell 2010; Jordan and Düvell 2002). Importantly, the term ‘transit’ is used here as a geographic description and not as a ‘tool of governance’ for European governments to delegitimise onward or secondary migration (Oelgemöller 2011) – a subject analysed in more detail in Chapter 7. Studies into the gendered nature of transit are dominated by the analysis of life in refugee camps, even though, as Harrell-Bond (2002) has shown, this represents only a small number of refugees (2002: 7). Nevertheless, research on life in refugee camps shines some light on how women experience aspects of transit. Crisp (2000: 604) examined refugee camp life in Kenya and identified that death and domestic and sexual violence took place on a daily basis, with women at particular risk. Bannerjee’s (2010) study on the conflict borderlands in India has been instrumental in highlighting how women’s alien status has translated into their sexual vulnerability. Research on Myanmarese refugees in Thai refugee camps by Martin (2004) revealed how refugees receive limited protection under Thai law and are subject to a range of socioeconomic and human rights abuses. Many are not recognised as refugees and face arrest or even deportation as punishment for leaving the refugee camps. Women refugees jailed for such offences have been subject to sexual violence. Many other women are said to be forced into sex work. In these refugee camp settings, it is unforeseeable that all transnational migrant subjects will be able to access legal and socioeconomic protection.

The nature of gendered violence against women in detention, in transit and upon arrival is receiving increasing attention within the literature (Hamood 2006; Pickering 2011). Hamood’s research in Libya found that men and women were kept separately in detention, and that both reported being subject to beatings and racist taunts, while women reported being threatened with rape (Hamood 2006). Some evidence emerged that men were treated more harshly than women, with beatings that were more frequent and more severe than the violence committed against the women (2006: 32). Sexual violence against women in detention was documented in the US case of Kasinga (Pickering 2011: 58), where a 17-year-old minor from Togo was a victim of abuse by detention centre guards, identified as part of a system of ‘capricious cruelty’. Since Kasinga, other border guards in the US have been subject to sexual assault charges for offences against women in detention (Pickering 2011: 58). Whether in transit or upon arrival, conditions in detention have been found to perpetuate gendered violence against women.
Historically, the specific protection needs of refugee women have failed to capture the attention of policy-makers, legislators and practitioners (Edwards 2010). Women were absent from the drafting of the 1951 Refugee Convention (Cook 1994; Edwards 2010; Hunter 2002a; Sinha 2001). Edwards (2010) argues that the consequences of this were two-fold. First, the masculine experience was presented as the norm for international refugee legal protection. Second, women and their experiences were judged as secondary in importance (Edwards 2010: 23). Earlier feminist movements around the turn of the 20th century focused on discrimination in immigration and nationality law based on sex, but largely ignored issues of race (WING 1985). The shift from a narrow focus on issues prioritised by Western women to the inclusion of the ‘concerns of women of colour, including immigrant or refugee women’, brought with it questions around migration regulation and exclusion (Bhabha 2004: 230). Writing of the British context in 1984, the feminist organisation Women, Immigration and Nationality Group (WING) argues that it has ‘mainly been left to black feminists to challenge’ the ethnocentrism of immigration laws (WING 1985: 3).

Critiques of the inaccessibility of the international refugee legal framework for women, alongside the development of other human rights frameworks, gained momentum from the 1970s (Edwards 2010). Fuelling this momentum was the UN Decade on Women 1976–85, and two World Conferences held in Nairobi and Beijing, at which the impact of displacement, violence and conflict on women was the focus (Edwards 2010; Martin 2010). In 1984, the European Parliament passed a resolution that highlighted the specific problems faced by refugee women. The UNHCR followed suit in 1985 (Bhabha 2004: 230).

Considerable academic attention has focused on the failure of refugee processing systems to recognise gender procedurally, and the impact this has had on women’s legal recognition (Freedman 2008; Kneebone 2005; Zeigler and Stewart 2009). Historically, women were often assumed to be reliant on their male partner’s asylum application and therefore were not interviewed in their own right (Crawley 2001; Pickering 2011: 59). Research has also highlighted the difficulties some women experience in having to recount narratives of persecution to immigration or other government officials. Bhabha and Shutter explain the dilemma thus:

Often reluctant to trust an unknown official with their story, they will be penalised for not disclosing all details immediately on arrival. Given the widely acknowledged reticence in speaking about rape and other sexual assault cases, victims of gender-based persecution will be particularly disadvantaged. The shortage of female interviewers and interpreters, and the obligation therefore to present case histories through men, will exacerbate the hurdles such women have to overcome. (1994: 240).
In an attempt to address the problem of large numbers of women excluded from refugee protection, the UNHCR and a number of states – Australia, Canada, the US, Sweden and the UK – have formulated Gender Guidelines targeting decision-makers and encouraging an understanding of gender-related persecution (Crawley 2001; Kneebone 2005; Macklin 1995, 1998; Pickering 2005, 2011). In 2002 the UNHCR released a revision of its 1991 guidelines, entitled ‘Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol Relating to the status of Refugees’ (the 2002 Gender Guidelines). However, such international and domestic guidelines which offer a gender-sensitive method of interpreting refugee law are administrative directives only; they are not accompanied by formal legal backing and are therefore weak when it comes to enforcement. Some scholars have been critical of the UNHCR’s efforts in leaving interpretations up to states and for not being more explicit in its guidance (Cipriani 1993). Researchers have also been critical of the minimal impact of gender guidelines on recognition rates of women’s asylum claims based on gender-related persecution (Bhabha 2004; Freedman 2008). In the UK setting, where Gender Guidelines have been established, a recent study found that the Guidelines did not form a part of refugee determination process at the appeal stage (RWRP 2005b in Freedman 2008: 162).

The absence of ‘gender’ as an enumerated ground of the 1951 Refugee Convention has been the subject of much controversy and debate (Cipriani 1993; Edwards 2003, 2010; Haines 2001; Kelly 1994). It is now widely accepted that the existing grounds of the 1951 Refugee Convention can be interpreted to include gender-related persecution (Crawley 2001; Haines 2001), although this technical capacity has not translated into an increased recognition of gender-based persecution (Edwards 2010; Freedman 2008). The EU Qualification Directive⁴, applicable across EU Member States as regards refugee determination, specifies that persecution may include gender-specific persecution of a sexual nature. It also stipulates that gender is a factor in deciding upon refugee determination. It stops short, however, of stating that women constitute a ‘particular social group’ (Edwards 2010: 25). Some scholars argue that including women as a particular social group may encourage the essentialising of women’s experiences (Crawley 2001; Edwards 2010; Kneebone 2005). Certainly in the Australian context, research has shown how gendered and cultural stereotypes are used to deny and undermine the use of the ground ‘particular social group’ to recognise gender-related persecution (Pickering 2011: 64). Crawley (2001) argues, alongside others (Pickering 2011; Randall 2002; Zeigler & Stewart 2009), for the strategic recognition of women's experiences of persecution within broader categories like ‘political opinion’ and ‘religion’, rather than ‘particular social group’ or a separate ‘gender’ ground.

Crawley (2001) claims that the centring of sex, rather than the construction of gender identified in specific geographical, historical political and socio-cultural contexts, has led to the discriminatory homogenisation of women’s experiences. Gender may be defined as the ‘social construction of power relations between women and men and the implications of these relations for women’s and men’s identity, status, roles and responsibilities’ (Crawley 2001: 6). The focus on women rather than gender in the 1951 Refugee Convention definition also leads to confusion between gender-specific persecution (such as female genital mutilation) and gender-related persecution (such as the persecution of women because of their identity and status as women). Crawley argues that forced migration research should focus on gender as opposed to ‘women’ in order to avoid generalising about women’s experiences. This approach also recognises that gender is socially and culturally constructed; recognising differences between women is crucial to understanding the heterogeneity of experiences of persecution and prevents one’s perspective being blinded by cultural relativist arguments (Mohanty 2003). Along with other factors such as race, class and sexuality, gender informs women’s experiences of persecution, and the disproportionately low number of successful gender-related persecution claims suggests that this aspect requires greater recognition.

PUBLIC/PRIVATE VIOLENCE AND THE ROLE OF NON-STATE ACTORS

The maintenance of a gendered distinction between ‘public’ and ‘private’ violence is a barrier to the recognition of women for refugee status (Bacon & Booth 2000; Charlesworth 1995; Cook 1994; Haines 2001; Kneebone 2005; Zeigler & Stewart 2009). This forms part of the privileging of masculine forms of violence in state responses to violence (Palmary et al. 2010). In this regard, Bhabha (1994) points to a dual problem for refugee women. First, violence that occurs in the private sphere, such as domestic violence, often fails to be given adequate recognition – it is judged as either too pervasive or too trivial. Similarly, rape is judged to be a personal act that is random and apolitical. Second, the political nature of women’s engagement with conflict often goes unrecognised (1994: 245). This may involve a failure to acknowledge women’s contribution in political movements, or judging women’s transgression of social mores and cultural norms as apolitical and therefore undeserving of refugee protection (Bhabha 2004: 252). Zeigler and Stewart (2009) argue that legal decision-makers fan misconceptions about the ramifications of recognising such violence, claiming that it ‘would open the floodgates to literally millions of refugees’ (2009: 115). Refugee women's struggle for recognition of their claims is supported by broader criticisms of the international human rights framework as regards the public/private binary (Charlesworth, Chinkin, & Wright 1991: 625; Lambert, Pickering, & Alder 2003). Charlesworth, Chinkin et al. (1991) argue that the ‘normative structure of international law has allowed issues of particular concern to women to be either ignored or undermined’ (1991: 625). This renders the ‘public’ sphere, where most aspects of cultural life, power and authority are
exercised, the domain of men. The public/private dichotomy, however, has been criticised for being largely a phenomenon familiar to white, middle-class women (Mohanty 2003).

Developments in international law have meant that non-state agents are increasingly being held accountable for acts of persecution where the state is unwilling or unable to provide transnational migrant subjects with protection (Anker 2002; Berger 2009; Costa 2002; Haines 2001). Traditionally, as suggested by Chief Justice Gleeson in the Australian High Court case of Khawar, ‘the paradigm case of persecution contemplated by the Convention is persecution by the state itself’ (Gleeson CJ cited in Costa 2002: 4). The UNHCR recently stated that in order to qualify as a refugee, it is immaterial whether or not the persecution feared originates from the State, from organisations controlling the State, or from non-state agents (Costa 2002: 4). It is now widely recognised that courts and tribunals have the ability to attach liability to states for persecution committed by non-state agents (Anker 2002; Haines 2001). The Qualification Directive expressly includes conduct by ‘non-state actors’ where the state or authority is unable or unwilling to protect asylum seekers against persecution (Article 6). These developments stand to improve the likelihood that women’s claims of persecution by ‘non-state actors’ will be recognised by the courts, instead of merely being relegated to the private sphere and disregarded for the purposes of refugee protection.

**HUMAN RIGHTS DISCOURSES – CULTURAL RELATIVISM AND UNIVERSALITY**

In considering the recognition of gender-based persecution, scholars have engaged in debates around human rights discourses, in particular, the tension between universality and cultural relativism. International human rights advocates argue that some values are so fundamental to every person that they should apply universally (Donoho 1990). Other scholars have challenged the claim to the universality of particular rights, arguing that values and human rights must be understood as situated within a cultural context (Donnelly 1984). As Otto observes, on the one hand, ‘universalists’ – traditionally from the Global North – contend that any compromise on universalism ‘will give the green light to tyrannical governments, torturers and mutilators of women’ (Otto 1997: 8). This argument aligns with problematic cultural narratives that have been criticised by postcolonial scholars for relying on unexamined assumptions and for promulgating homogeneity’. The blanket application of universalism has thus been widely criticised (Berger 2009; Lambert et al. 2003; Crawley 2001; Mohanty 2003; Mohanty et al. 1991; Randall 2002). Underpinning ‘universalist’ reasoning is the assumption that the attainment of objective and true knowledge is possible. Further, ‘universalists’ argue that the ‘historical, situated contingencies of the production and interpretation of knowledge can be transcended by modern scientific or dialectical methods’ (Otto 1997: 8). In response, poststructuralists have claimed that all knowledge and truth is the outcome of complex power relations and is contingent upon divergent ways of comprehending the world (Lambert et al. 2003).
Scholars have questioned the utility of a human rights discourse (Smart 1992) and its practical application for refugee protection (Dauvergne 2008). Charlesworth (1994) and Crawley (2001) have argued that human rights discourse can offer a path to ‘formulate political and social grievances … recognised by the powerful’ (Charlesworth 1994: 59). This strategic use of human rights discourse is an emerging area (Lambert et al. 2003). Qualitative research with refugee women undertaken by Lambert, Pickering et al. (2003) along the Thai–Burma border documented women’s strategic engagement with human rights. These authors concluded that women adopt a position of ‘strategic universality’, in utilising human rights frameworks while at the same time acknowledging their limitations (2003: 165). Crawley argues that it is ‘both necessary and possible to find a way of reconciling in a non-ethnocentric way, the enforcement of universal human rights standards with an understanding of and respect for cultural difference’ (Crawley 2001: 10). Crawley further states that the framework for asylum determination needs to be ‘transformed to accommodate an inclusion of women, not as a special case deviating from the norm, but as one of many different groups in an open and heterogeneous universe’ (Crawley 2001: 9).

Increasing evidence is emerging from the US that the outcome of asylum applications based on gender-related persecution is dependent on whether the persecution can be linked to practices attributable to non-Western, ‘foreign’ cultures (Pickering 2011; Sinha 2001). Sinha argues that this ‘cultural hook’ is evidence of an asylum determination procedure that relies on, and perpetuates, cultural stereotypes and gender inequities. In examining recent decisions involving gender-related persecution, Sinha concluded that where the persecution claimed was also pervasive in the US, decision-makers have been reluctant to grant asylum and are failing to recognise the political and institutional nature of violence against women. Instead, decision-makers seek ‘a religious or cultural practice on which to blame the abuse’ (Sinha 2001: 1566). The outrage that greets cases involving female genital cutting, in contrast to asylum applications involving other types of gender-related persecution such as domestic violence or rape, illustrates this trend (Pickering 2011; Sinha 2001). Analysing cases of female genital cutting in Refugee Review Tribunals in Australia, Pickering (2011) concludes that this practice is to some extent recognised as gender-related persecution, but that it has not been incorporated into legislation and is therefore subject to judicial discretion (2011: 76). Sinha observes that there is a strong correlation between Western racialised narratives surrounding female genital mutilation and cultural stereotypes of ‘non-white immigrant cultures as bound by regressive customs and native practices’ (Sinha 2001: 1585). In this way, cases involving gender-related persecution are successful not because they fit within asylum jurisprudence, but because they align with the cultural stereotypes surrounding non-Western cultures.
Bhabha (2004) claims that women have a stronger likelihood of having their claims of gender-related persecution accepted by courts in some states in the Global North. As discussed above, many scholars have focused on the difficulties inherent in gaining recognition of women’s experiences of persecution in refugee determination procedures in the North American (Kelly 1993; Macklin 1998; Randall 2002), Australian (Bacon & Booth 2000; Hunter 2002a, b) and European contexts (Bhabha & Shutter 1994; Freedman 2008). The prevailing contention that the international refugee protection framework favours a male model has driven this research (Berger 2009; Chinkin 1997; Zeigler and Stewart 2009; Kelly 1993). However, some statistical evidence has emerged to challenge this conclusion. Bhabha (2004) cites research from Sweden, Switzerland, the Netherlands and Canada in which female asylum applicants received a higher proportion of successful outcomes than their male counterparts. Setting aside the difficulties experienced by women in initially accessing asylum procedures in developed countries, women’s claims were more likely to be successful once they arrived and could apply for asylum. This does not displace the value of research that identifies the difficulty of having claims of gender-based persecution accepted. Bhabha (2004) cites research in Canada, a country that has adopted Gender Guidelines, which found that only 1 per cent of asylum claims were gender-related (in Spijkerboer: 179). It would appear that courts and tribunals are not recognising gender-related persecution more frequently; rather, women are gaining protection under other Refugee Convention grounds.

A number of explanations have been offered to account for the greater success of women’s asylum claims compared to men’s (Bhabha 2004: 236). Some argue that women’s claims tend to be stronger than men’s (Van den Bedem et al. in Spijkerboer 2000: 26). Others suggest that the low numbers of women who apply for asylum may account for their success (Rosenblum in Bhabha 2004). Spijkerboer (2000) provides several other explanations including: women asylum applicants hail from countries that have higher overall recognition rates; gendered stereotypes create a perception of women as ‘vulnerable and dependent’ and ‘less adventurous, and therefore women’s claims are more likely to be successful (Spijkerboer 2000: 194). Wetten argues that women are more likely to be perceived as credible and therefore to be believed (2001 in Bhabha 2004: 238); while Bhabha asserts that women are benefiting from ‘victimology’, the ‘benign approach to victims of abuse’ (Bhabha 2004: 231). These perceptions of vulnerability are often reinforced by cultural stereotypes – ‘the weak Muslim woman, the defenceless Asian girl’ – even when no gender-specific persecution is claimed (Spijkerboer 2000: 7). In addition, Bhabha argues that the women’s movement has influenced domestic opinion to the point that ‘being female simpliciter skews decision making discretion’ (Bhabha 2004: 239).
In summary, research in this area has shown that, in the courtroom, recognition of gender-related persecution remains limited, although there have been some gains. Women face particular difficulties in exiting a country in which they experience persecution and are more vulnerable to violence on the journey to a country where they can apply for asylum. The next section will explore the key tensions between refugee protection and the discourses, policies and practices of the securitisation of migration.

LEGAL FRAMEWORKS IN CONFLICT: TENSIONS BETWEEN REFUGEE PROTECTION AND THE SECURITISATION OF MIGRATION

Within the EU, migration and security have come to form a powerful nexus that has resulted in restrictionist migration policies (Huysmans 2006). European integration has led to the harmonisation of refugee policy among Member States. This harmonisation has been criticised for making the most restrictive approach ‘enshrined as a possible approach for all’ (Bhabha 2004: 222), and for harmonising minimum standards that are too low (Bigo, Carrera, Guild, & Walker 2009). Short of withdrawing from the 1951 Refugee Convention, EU Member States have ‘virtually exhausted the repertoire of feasible restrictions to asylum systems’ (Boswell 2006: 99).

There are doubts, however, as to how successful the harmonisation project has been, with many pointing to inconsistencies in practice among Member States (Freedman 2008; OAN 2006). There are several identifiable points of tension between the securitisation of migration and refugee protection frameworks, which are captured in Table 1 below.

Table 3: Tensions: legal frameworks in conflict

<table>
<thead>
<tr>
<th>Refugee protection</th>
<th>The securitisation of migration</th>
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<tr>
<td>1. Requirement to cross an international border</td>
<td>‘Regimes of non-entrée’ – interdiction/visas/carrier sanctions</td>
</tr>
<tr>
<td>2. Durable solutions</td>
<td>Warehousing/containment</td>
</tr>
<tr>
<td>3. Rights and entitlements</td>
<td>Diluted rights and entitlements</td>
</tr>
<tr>
<td>4. Non-penalisation for illegal entry</td>
<td>Penalisation – detention</td>
</tr>
<tr>
<td>5. Non-refoulement</td>
<td>Deportation/refoulement</td>
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</tbody>
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These tensions give rise to a series of normative conceptual questions. This section will explore these tensions and conceptual questions, and examine how they manifest at both a legal and a
policy level. The chapters that follow will use empirical data to analyse how these tensions are played out at a local level through qualitative interviews with women refugees in Malta across several stages of the migratory journey – exit, transit, arrival and onward migration.

TENSION ONE: REGIMES OF NON-ENTRÉE AS ‘REFUGEES BORDERS’

Conceptual question: If refugee protection is premised on crossing international borders, what is the gendered impact of regimes of non-entrée on those who seek entry for the purpose of claiming refugee protection?

The refugee protection framework is premised on the right of people to cross international borders to apply for asylum (Goodwin-Gill & McAdam 2007; Hathaway 1991). However, the discourses, policies and practices of the securitisation of migration work to close off the borders of the EU, truncating options for asylum seekers to access refugee protection thus creating ‘refugee borders’.

Regimes of ‘non-entrée’ are restrictive state policies and practices that tactically deploy the border to minimise exposure to asylum seekers (Hathaway 1991; 1993; Hathaway and Neve 1997; Chimni 1998). As already discussed, the policies and practices that illustrate regimes of non-entrée include: visa requirements and carrier sanctions (Bhahba and Shutter 1994; Guild 2005), externalisation (Garlick 2006; Gil-Bazo 2006; Hyndman & Mountz 2008), warehousing/containment (Smith 2004; Hathaway 1997), and interdiction (Fischer-Lescano et al. 2009). While not a new phenomenon, regimes of non-entrée (Hyndman & Mountz 2008) form a central part of the securitisation of migration. I adopt the terminology ‘regimes of non-entrée’ to describe the expansive policies and practices pursued by governments in seeking to stop asylum seekers from crossing their borders. This section draws on two prime examples of regimes of non-entrée to illustrate this practice: visa requirements and carrier sanctions (Bhahba and Shutter 1994; Guild 2005); and interdiction – the practice of returning asylum seekers without conducting any substantive review of their claims (Fischer-Lescano et al. 2009).

VISA REQUIREMENTS AND CARRIER SANCTIONS

EU Member States now prescribe mandatory visa requirements for citizens of particular countries (Guild 2005; Juss 2005). Some European countries introduced visa requirements during the Cold War (Chimni 1998), but their use has now become mandatory across all Member States. To be clear, there is no asylum visa. In fact, in the UK, the government press release that
accompanied the introduction of these provisions expressly stated that its twin aims were to reduce asylum applications and to reduce visa over-stayers (Guild 2005).

The common visa list\(^5\), applicable to all EU Member States, is revealing in terms of who it stipulates must provide a visa. The countries requiring a visa reflects economic and racial prejudices (Bigo & Guild 2005). Moreover, obtaining a visa is extremely difficult. Consular officials of the UK are overtly encouraged to screen out asylum seekers (Guild 2005). Demonstrating the policy of risk reduction, all the Horn of Africa countries are on the list, meaning that citizens of those countries must apply for a visa to enter Member States of the EU. For several countries, such as Afghanistan, Iraq, DRC, Nigeria, Ethiopia, Eritrea, Somalia, Ghana and Sri Lanka – all the principle source countries for asylum seekers (Guild 2005) – a visa is required even if the individual is only transiting through an EU Member State.

The introduction of strict visa requirements across all Member States has dramatically reconfigured the EU border. In the context of Britain, Bhabha and Shutter (1994) illustrate this practice clearly with reference to the status of Tamil Sri Lankans. In April 1984, the situation of the Tamils in Sri Lanka was so bad that Britain announced a ‘no return’ policy for those Tamils who had managed to flee to Britain. The conflict in Sri Lanka continued to worsen and the numbers of Tamils fleeing to Britain increased. Bhabha and Shutter write that, following the appearance of reports in the media linking the ‘exodus’ to ‘economic migration’, the government took restrictive action (1994: 236). The UK Government imposed visa requirements on Sri Lankans as of 29 May 1985. This was the first time that Britain had required visas of Commonwealth citizens and the introduction of this policy made it more difficult for asylum seekers to enter the UK and seek refugee protection. For a short time, the Home Office in Sri Lanka provided opportunities for people to apply for UK visas in ‘hardship’ cases, but this practice was concluded by the Asylum Appeals Immigration Act 1993 (UK). As Bhabha and Shutter note (1994), this practice was later repeated in the context of the forced migration of Kurds from Turkey to Britain (1994: 236).

Visa requirements are enforced by the border police of a Member State in addition to private carriers – ferries, trains and airlines – through the introduction of carrier sanctions (Athwal & Bourne 2007; Webber 1996). If the carrier transports a person to an EU Member State without the requisite travel documents and visas, the carrier must assume responsibility and return that person, and will be fined (Guild 2005). Such fines in the UK can amount to £2000 (Athwal & Bourne 2007). They are now obligatory for EU Member States since the enactment of Council Directive 2001/51/EC of 28 June 2001, supplementing the provisions of Article 25 of the

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Schengen Agreement. Carrier sanctions enlist a network of transnational private companies to enforce visa requirements and effect border control.

**INTERDICTION**

The practice of interdiction creates numerous tensions with the obligation to protect refugees. There is a positive obligation on states to temporarily admit asylum seekers intercepted at sea and not to commit refoulement by returning them (UNHCR 1981 in Frelick 1993). Yet examples from Australia (Weber 2006), North America (Fischer-Lescano, Lohr et al. 2009), Central America (Frelick 1993), South-East Asia (Frelick 1993) and the EU as explored below reveal that the practice is widespread. Interdiction is described as one of ‘the most coercive and controversial’ of the pre-emptive risk-reduction measures (Weber 2006: 27). Interdiction represents a contest between reasserted sovereignty, exercised through immigration control, and human rights norms such as those contained in the 1951 Refugee Convention (Morris 2003 in Weber 2006: 27-28). In the US context in the early 1990s, a boat of Haitian citizens were intercepted and returned to Haiti without any review of the asylum claims of those on board. The US Supreme Court subsequently ruled that the practice was lawful (Frelick 1993) – a decision that has been the subject of much criticism (Fischer-Lescano et al. 2009). Fischer-Lescano, Lohr et al. argue that while this might be practised in some states, it is far from acceptable under international law. They contend that there is no place outside the country of origin where non-refoulement does not apply (Fischer-Lescano et al. 2009). Where a ship can be termed to be under the effective control of that state, prohibitions on refoulement exist (Lauterpacht and Bethlemen 2003: 111). Moreover, Motomura (1993) argues that accountability for the actions of state agents ought to be captured by applying the notion of the ‘functional equivalent of the border’ in place of the narrower definition of the geographic border. This would effectively expand the territorial scope and application of a state’s obligations (Motomura 1993: 710).

The European Convention of Human Rights also applies extraterritorially, yet there have been many examples of interdiction in the Mediterranean off Malta and Italy (HRW 2009c; Squires 2009; Stagno-Navarra 2009). Italy’s interdiction policy began in earnest in 2009 and resulted in 900 boats carrying asylum seekers and migrants being returned to Libya (HRW 2009: 23-24). According to a Human Rights Watch (HRW) report (2009), interdiction occurred before this time also. There have also been incidents where states have been reluctant to come to the rescue of boats in distress that may have asylum seekers on board (Brothers 2009; Peregin & Grech 2009). UNHCR representative Laura Boldrini has concluded that various Mediterranean countries are creating a ‘wild west in which human life has lost its value and people in danger are left to fend for themselves’ (Hooper 2007). Bilateral agreements struck between Member States and third countries have operated to undermine state obligations to transnational migrant subjects at sea. This is the case with the agreement between Italy and Libya that allows for boats
to be returned to Libya without those on board receiving access to refugee determination procedures (Andrijašević 2006; Monzini 2007). This agreement, which was initiated in 2004, has not been fully disclosed so its exact terms are unclear; yet its impact has been widely noted and criticised (See AI 2008). Standard maritime practice is to disembark at the closest port and refer passengers to their consular authorities, except where they fear persecution (Fischer-Lescano et al. 2009). Interdiction prevents transnational migrant subjects from lodging claims for refugee protection.

Klepp (2010) conducted a study on how the inconsistencies and tensions in this complex area of international law are interpreted by law enforcement personnel from FRONTEX and the Armed Forces of Malta (AFM). This research took place during Nautilus II, an operation that intercepted 3173 migrants at sea. During Operation Nautilus II, stage II, 700 migrants were returned to Libya according to the Maltese Ministry sources. Conversely, the Commanders from the AFM claimed that no migrants were returned because they lacked the consent of Libya. Klepp thus identified that there is a persistent difference of opinion concerning what really goes on at sea. The situation is plagued by confusion and a lack of clarity about rules, and decisions are made on an ad hoc basis. Klepp also concluded that law enforcement agencies of Member States along the external border resent the EU policies, such as the Dublin II Regulation, that place considerable onus on them to conduct border controls for the whole of the EU. While institutional frameworks like the European Parliament exist for the robust contestation of these policies, this resentment is manifesting on the high seas and in practices of interdiction that return asylum seekers to their point of disembarkation (Klepp 2010).

**GENDERED IMPACT OF REGIMES OF NON-ENTRÉE**

The impact of this securitisation of migration policy on the experiences of those who need to flee their country of origin, and the gendered dimensions of this policy, is an important line of inquiry. The restrictive impact on asylum seekers has been resoundingly criticised (Bhabha & Shutter 1994; Hathaway 1993; Juss 2005; Mole 2005). This policy has resulted in people having to remain in often dangerous refugee camps for prolonged periods, and the separation of family members between the Global North and Global South (Bhabha & Shutter 1994: 219). Some research has been carried out on the punitive impact of visa requirements that favour skilled migration programs and exclude asylum seekers (Bhabha & Shutter 1994; Guild 2005). However, minimal attention has been paid to the impact of regimes of non-entrée from a gendered perspective. It would be interesting to identify whether there were equal numbers of Tamil men and women gaining entry to the UK when visa requirements did not exist in the UK. The questions left unanswered are several, and include: are women more likely than men to leave their country of origin first, and then the family is to follow later through family reunification provisions? how does creating more barriers to entry, and prioritising the right of the sovereign...
state to exclude, impact on women’s ability to seek asylum? we do know that women asylum seekers greatly outnumber their male counterparts in countries neighbouring their country of origin, and are underrepresented in developed countries, but what does this tell us about the journey and settlement in securitised countries of the Global North? and for those who must return to transit countries as a result of the practice of interdiction, how are they treated upon return? To date, we have relied primarily on NGOs to tell the story and answer such questions; but these accounts have also tended to privilege the male perspective. The JRS undertook research on refugee experiences in Libya but only interviewed male asylum seekers about their experiences (JRS 2009).

Moreover, conceptual questions need to be answered in light of what the literature says about the increased demand for people smugglers and the corresponding increase in exposure to risk and harm for transnational migrant subjects in the context of the securitisation of migration. Thus, many unanswered questions remain as to the gendered impact of policies of non-entrée. For those women fleeing persecution and seeking refugee protection, how are their experiences impacted by visa requirements, carrier sanctions and practices of interdiction?

TENSION TWO: WAREHOUSING VS. DURABLE SOLUTIONS

**Conceptual question:** How is the emphasis on warehousing asylum seekers and refugees in their country or region of origin impacting women’s access to and experience of asylum?

The second tension derives from the rise in prevention strategies that effectively warehouse people in their region of origin. This practice forms part of the regimes of non-entrée discussed above. Warehousing practices operate to contain populations by disabling them from travelling further to access protection. Warehousing is defined as:

> the practice of keeping refugees in protracted situations of restricted mobility, enforced idleness, and dependency – their lives on indefinite hold – in violation of their basic rights under the 1951 UN Refugee Convention. (Smith 2004: 38)

Refugee camps are designed to be temporary but for many refugees the stay is long-term; average waiting periods for refugees have increased from nine years in 1993, to 17 years in 2003 (UNHCR 2006). In refugee camps, people can go ‘largely unnoticed or forgotten’ (Bauman 2004: 78). The worst examples of warehousing are those that involve physical containment, although any situation in which refugees are ‘deprived of the freedom necessary to pursue normal lives’ fulfils the definition of warehousing (Smith 2004: 38). Problematically, warehousing
has become the de facto solution to the unauthorised movement of people across borders (Smith 2004).

Traditionally conceived, there are three solutions designed to address the extra-legal movement of people across borders to escape persecution: voluntary repatriation; permanent local integration; and resettlement. The first option, voluntary repatriation, is logically an unpopular option for those who go to great lengths to cross borders and escape the conditions in their country of origin. Organisations such as the IOM make it one of their key priorities to organise voluntary repatriation programs, but the uptake is minimal despite the incentives offered. Large amounts of money are expended on running these programs, which are justified primarily on public policy grounds, and seen as an astute mechanism of return. Such programs are also supported by the UNHCR, who actively encourages repatriation and voluntary return (Hyndman and Mountz 2008). Resettlement, only ever available to approximately 1 per cent of refugees in any case, has become an unpopular policy initiative of governments in the Global North since September 11, 2001 (Smith 2004). This has further reduced the availability of resettlement for transnational migrant subjects. Countries of the EU take on a tiny number of people under resettlement programs. In 2009, of the 128,000 people submitted by the UNHCR for resettlement, 84,000 were accepted by 26 countries, but only 6800 were accepted by European countries (UNHCR 2010).

Integration, despite being described by anthropologists as having great value for both the home country and the transnational migrant subjects themselves (Harrell-Bond 1999; Indra 1999b), is losing its appeal among policy-makers. Some commentators criticise integration discourses for producing assumptions of homogeneity among the existing population and promoting myths of ‘the other’ (Chimni 1998). However, this policy had been a priority, particularly in Africa, up until the 1960s, when the number of refugees swelled in the wake of the conflicts in Somalia, Uganda, Ethiopia and other countries – from less than 2 million to 4 million in the decade between 1970 and 1980 (Smith 2004: 44). While the adoption of strategies of repatriation, integration and resettlement has been reducing in popularity, warehousing has emerged as the de facto solution to the ‘problem’ of extra-legal border crossing.

Warehousing is prevalent and is supported by the EU through multilateral and bilateral agreements with regions of origin. As at 2004, it was estimated that over half of the world’s refugees could be categorised as living in these protracted circumstances for at least one decade and up to several generations (Smith 2004). In 1994, the European Commission issued a Communication on Immigration and Asylum Policies that spelt out a new direction on asylum which connected the need to ease migration pressure with increased humanitarian assistance to enable people to stay nearest to their ‘home’ (Hyndman and Mountz 2008). This plan was built upon in 1998 by a strategy paper produced by the Austrian Government in the EU presidency,
and the establishment of the High-Level Working Group on Migration and Asylum, tasked with designing action plans to prevent asylum seekers from departing from countries of origin or transit. Eventually, negotiating agreements on readmission became the focus of these early mechanisms (Hyndman and Mountz 2008): using EU muscle to negotiate the return of asylum seekers who had been unsuccessful in their applications in EU Member States.

Under the auspices of ‘safe havens’, camps have been actively pursued as a solution to refugee flows by the former UK Prime Minister Tony Blair since early 2003 (Statewatch 2003). The UK Government sought to establish ‘safe havens’, so that it could deport asylum seekers who arrive in the UK to an external processing site for six months to await the restoration of stability in their country of origin (BBC 2003). Those who could not return would be distributed among the UK and other Member States through a quota system. This external processing site would be located in a state near a country that generates migration, such as Morocco, Turkey or Northern Somalia (BBC 2003; Prasad 2003). Bauman (2004) argues that naming these sites ‘safe havens’ does not hide their purpose – to place people ‘in the region and at a safe distance from Britain’ (2004: 68). The notion of extraterritorial or regional processing was put forward by the Blair government as an obligatory model; however, these ‘safe havens’ have not yet eventuated.

In response to these UK proposals, however, the European Commission developed pilot Regional Protection Programmes (RPPs) (EC 2005), aimed at enhancing the ‘protection capacity of the regions involved’ and offering ‘better’ protection by providing ‘durable solutions’ – repatriation, local integration or resettlement. Resettlement was only an option where the first two solutions were unavailable. According to the European Commission’s proposal:

These programmes will incorporate a variety of relevant instruments, primarily focused on capacity building, and include a joint resettlement programme for those Member States which may be ready to participate in such a programme on a voluntary basis. With regard to countries of transit, the European Council emphasised the need for intensified cooperation and capacity building, both on the southern and eastern borders of the EU to enable those countries better to manage migration and to provide adequate protection for refugees. (EC 2005: 2-3)

Two areas seen as distinct regions were selected to host the pilot: the Great Lakes region of Tanzania was selected as a region of origin for asylum seekers and refugees, and the Western Newly Independent States of Moldova, Ukraine and Belarus were selected as a region of transit (ECRE 2008b). The location of one of the RPPs in such close proximity to the EU suggests that its purpose was to stop asylum seekers and refugees from entering the EU (Haddad 2008). Following a positive review of the pilot, which indicated that it was a ‘successful first step’ in building capacity in the region of origin, these pilot programs have been continued and another two have been initiated in the Horn of Africa and North Eastern Africa (EC 2011a). There is a
need for further independent research to examine how these programs are operating and whether they are achieving their stated goal of improving protection for refugees, and not merely intervening to stop refugee flows to the EU.

Warehousing has gendered implications for refugee protection (Smith 2004). The dangers for men and women in camps are considerable. Men may be susceptible to recruitment into armed groups (Turner 1999). Much has been written about the insecurity and danger facing women in refugee camps; camps in Kenya that warehouse Somali refugees have been widely criticised for the levels of violence against women (AI 2008, HRW 2008, HRW 2007). Smith (2004) argues that warehousing fosters gender-based violence. Additionally, warehousing puts camp administrators beyond the reach of accountability mechanisms and judicial review, jeopardises voluntary return if transnational migrant subjects come under the authority of military leaders in the camps, distorts local economies, creates tension between local communities and transnational migrant subject populations, and fosters disempowerment. Warehousing and the notion of refugee camps receive no mention in the 1951 Refugee Convention. As Smith points out, those who drafted the Refugee Convention had the experiences of Hitler’s concentration camps and Stalinist Russia’s gulags, so no doubt the camp model would have been resoundingly rejected. Despite this, the camp is the primary option currently being pursued by many international organisations, agencies and governments.

TENSION THREE: DETERRING REFUGEES – DILUTED OR WITHDRAWN RIGHTS AND ENTITLEMENTS UPON RECEPTION

Conceptual question: Refugee protection guarantees access to certain rights and entitlements, yet policies of deterrence aim to restrict socioeconomic rights and dilute legal protection for asylum seekers and refugees. What is the impact of precarious legal status and restrictions on socioeconomic rights for those who are the target of these policies, and what is the gendered impact on women?

Applying for asylum upon entering a Member State of the EU triggers the beginning of what is termed the ‘reception’ phase. All of the women interviewed for this research had progressed through the reception stage and many had subsequently received refugee protection, defined as refugee status or other complementary protection. The refugee protection framework provides for refugees and asylum seekers to benefit from specific rights and entitlements during reception (Hathaway 2005). The securitisation of migration framework, conversely, aims to deter people
from arriving illegally and thus to restrict access to welfare benefits and diminish conditions for asylum seekers. This section examines this tension with specific reference to the strategy adopted by governments of deterring asylum seekers by reducing socioeconomic and other benefits upon reception (Athwal & Bourne 2007; Bloch & Chimienti 2011; Bosworth & Guild 2008). The diluted forms of legal protection available in the context of the securitisation of migration are also explored (McAdam 2005).

RECEPTION – RIGHTS ON A SHOESTRING

Reception conditions are recognised by mental health experts as critical to the health and wellbeing of asylum seekers and refugees (Silove, Steel, & Watters 2000). A study from the UK found that poor social and financial supports were linked with increased levels of depression among asylum seekers and refugees (Gorst-Unsworth & Goldenberg 1998). A similar study in Australia confirmed the connection between harsh living conditions and ongoing post-traumatic stress disorder (PTSD), anxiety and depression (Gorst-Unsworth & Goldenberg 1998). The minimum standards of reception conditions for asylum seekers are set out in the EU Directive on Reception Conditions, and are applicable to all asylum seekers who arrive in the EU. According to this Directive, such minimum standards are those ‘that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States’. The emphasis on comparable conditions is fundamental to a further aim of the EU Reception Conditions Directive: to prevent onward migration.

The dual intent of the Directive is to ensure that applicants have a dignified standard of living, and comparable living conditions in all Member States to limit the secondary movement of asylum applicants (Europa 2008). It specifically targets secondary movement, aiming to prevent asylum seekers from migrating between Member States. There are minimum standards on the following:

- ‘[M]aterial reception conditions, in particular accommodation, food and clothing, in kind or in the form of a financial allowance. Allowances must be such that they prevent the applicant from becoming destitute;
- Family unity;
- Medical and psychological care;
- Access to the education system for minor children and language courses to enable them to attend ordinary school’. (Europa 2008)

Provisions relating to accommodation stipulate that the minimum standard for accommodation facilities provided by a government, as is the case in Malta for the majority of asylum seekers and refugees, is an ‘adequate standard of living’ (Article 14). While this is the minimum requirement, governments are also obliged to take into account people with special needs, of which pregnant women, women with young children and those who have experienced torture, rape or trauma form a part. This policy is supported by studies that suggest a strong link between ongoing PTSD and other psychiatric illnesses (Silove et al. 2000), but the additional aim of the policy is to stop asylum seekers moving between Member States.

Research documenting the reception conditions faced by asylum seekers and refugees has shown, however, that there are considerable disparities between Member States. In some Member States, conditions are far from ‘dignified’. Rather, policies subject asylum seekers to undignified and unsanitary living conditions. HRW (2011a) argues that in the case of Greece, conditions for asylum seekers and refugees are inconsistent with the Convention Against Torture. The restrictions on benefits and facilities for asylum seekers and refugees as part of a strategy of deterrence, address what the government perceives are incentives to reach particular Member States and apply for asylum (Athwal & Bourne 2007; Bosworth & Guild 2008). Other documented conditions include limited access to rights, legal aid, poor housing, limited access to healthcare, isolation and stress (Athwal & Bourne 2007; Bloch & Chimienti 2011; Bosworth & Guild 2008; Fekete 2011). At a minimum, some women obviously require childcare to enable single mothers to work or women with families to work. However, childcare receives no mention in the Reception Conditions Directive on minimum standards.

Restrictions on employment in some countries means that asylum seekers must work illegally in order to financially support themselves (De Genova 2002; Webber 1996). Harm is increasingly evident in the number of asylum seekers killed, injured or exploited while in employment (Athwal & Bourne 2007; Bloch & Chimienti 2011; Grant 2005). As Webber writes, ‘[t]heir status forces them into conditions of slavery at work, whether it is Chinese immigrants working a 16-hour day in Madrid basement clothing factories or Rwandan women working for £1.50 an hour in London’ (2000: 6). In light of research suggesting that the global economy has an increased appetite for migrant workers to power it (Melossi 2003), the need to guarantee minimum standards and conditions for vulnerable workers is even more pronounced. Precarious legal status exposes asylum seekers to a greater risk of harm in employment.

For women, the narrowing access to rights and entitlements in reception is likely to be widely felt. Women are more likely to have caring responsibilities and so allowances may have to stretch further than is the case for their male counterparts. Structurally, women may also have unequal access to opportunities in the employment market or language and vocational training where their migration status permits. Women are more likely to be clustered in low-skilled industries that
do not offer high remuneration. Women's access to employment, whether in the formal or informal labour market, may also be compromised because of caring responsibilities and a lack of basic childcare compounds the problem. Women may also be at greater risk when they do participate in informal employment because of exposure to violence. Conceptual questions around women's participation and experience in informal labour markets are pertinent here, including in relation to sex work.

Access to medical and psychological healthcare is particularly important for women for several reasons of which two are as follows. First, pregnant or lactating women have special need. Second, healthcare is also important for women who have experienced trauma prior to exit or during the journey to the country of asylum. While this forms part of the minimum standards, enforcement is difficult. How can women exercise their rights when states are not adhering to these minimum standards? The Reception Conditions Directive does not make this clear. Reductions in rights and entitlements heighten vulnerability for transnational migrant subjects.

**DILUTED PROTECTION**

In the EU, including Malta, one of the major changes to refugee protection has been the codification of more temporary forms of legal status such as subsidiary and temporary protection (McAdam 2005), and the Maltese ‘temporary humanitarian protection’ (Pickering & Gerard 2011). The laws on subsidiary protection in the EU entrench a hierarchy that separates refugees from beneficiaries of subsidiary protection, with the latter entitled to fewer benefits and protection that is subject to periodic review (Goodwin-Gill & McAdam 2007; McAdam 2005: 461). Since its introduction, governments have shown a preference for awarding subsidiary protection over refugee status (Hathaway 2003). In Malta, recognition rates for refugees contrast dramatically with those for subsidiary protection. In 2008, for example, 19 people received refugee status whereas 1394 received subsidiary protection (MJHA, 2009: 6). This amounts to 0.07 per cent of applicants receiving refugee status, and 50 per cent receiving subsidiary protection. No gender breakdown of these statistics is available. Bhabha and Shutter (1994) write of a similar impact in the UK where there has been a demonstrable preference for granting temporary forms of protection. The decrease in recognition of refugee status has been matched by a corresponding increase in the number of people receiving exceptional leave to remain in the UK. Overall, war and conflict has continued globally, but recognition of persecution has reduced. The political climate, Bhabha and Shutter argue, is the only factor that has shifted (1994: 241).

The increased use of forms of complementary protection gives rise to questions about the gendered impact of this dilution of legal protections. Seeking asylum is a challenge to illegality, but diluted protection ensures only partial protection (McAdam 2005; Coutin 2005). One of the key implications for women is the inaccessibility of family reunification under complementary
protection provisions (Bhabha & Shutter 1994). For those who receive a complementary form of protection that falls short of refugee status, access to family reunification and other conditions is dramatically reduced (McAdam 2005). Family reunion is not mentioned in the 1951 Refugee Convention (Jastram & Newland 2003), but other human rights instruments combine to make it an obligatory consideration for states. In the context of Britain, Bhabha and Shutter observed the connection between diluted legal protection, access to family reunion, and the onset of mental illness and desolation (1994: 236). They described the situation for a Sri Lankan Tamil, Nirmala, who escaped Sri Lanka and applied for refugee status in Britain. Her claim to asylum was rejected, even though her family had links to the ‘Tiger’ movement and she had narrowly escaped a raid in which her two brothers were arrested. She received ‘exceptional leave to remain’ status, which came with no family reunification rights. The resulting protracted family separation and isolation led her to be hospitalised with clinical depression (1994: 236). There are other examples from the UK where hunger strikes have caused the government to revisit their stance and grant asylum seekers refugee status. This was the case for Sultan, a Turkish Kurd in the UK who, after her 17th day without food, was granted an immigration status by the government that would entitle her to bring her children to Britain (Bhabha & Shutter 1994: 237).

The gendered dimension of the impact of diluted legal protection warrants further examination. In the Australian context, Pickering (2005) has drawn attention to the increase in the number of women and children coming directly to Australia by boat, as a result of the introduction of temporary protection visas in 2001. These visas did not allow family reunification; thus, unless women and children joined their spouses on the boats, they would not gain entry to Australia. This increased women’s exposure to dangerous and risky border crossings.

TENSION FOUR: THE RIGHT TO NON-PENALISATION FOR ILLEGAL ENTRY VS. ADMINISTRATIVE DETENTION

**Conceptual question:** Refugee protection prescribes non-penalisation for those who enter a country illegally to apply for asylum. Therefore, how can mandatory detention be reconciled with non-penalisation, and what is the gendered impact of detention on women?

The administrative detention of asylum seekers — a policy that has been practised in southern states for a long time (Hathaway & Neve 1997: 119) — has now become a key plank of securitisation of migration policy in Europe (Hailbronner 2007; Khosravi 2009; Malloch & Stanley 2005; UNHRC 2007; Weber 2002; Weber & Bowling 2008; Welch & Schuster 2005). In the EU, detention occurs at different transit points, in airports, train stations, and at the pre-admission
phases because of the Dublin II Regulation (Schuster 2011a). Although statistics are difficult to locate, and many detainees are never registered, it is assumed that the introduction of safe third-country provisions, and the Dublin II Regulation, has increased the use of detention for asylum seekers (Broeders 2010; Fekete 2009a: 89; Hailbronner 2007; Khosravi 2009; Schuster 2011a; Welch & Schuster 2005). This practice of penalisation seemingly runs contrary to Article 31 of the 1951 Refugee Convention, which provides for non-penalisation for illegal entry:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

This section focuses on detention in Europe, while the forthcoming chapters on transit explore detention in Libya. The increasing number of foreign nationals in prison in EU Member States is not discussed here (See Fekete 2009b; Fekete & Webber 2010; Melossi 2003; Wacquant 1999), but is considered to be another consequence of the securitisation of migration.

Under new arrangements, detention for up to 18 months is legal within the EU as part of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. There is still some variance between Member States as to how long people may legally be detained. Some Member States practise shorter periods, such as Italy, which has a maximum detention period of 180 days. Malta had no maximum period prior to implementing the second Procedural Directive (LIBE 2006: 2), which prescribes that administrative detention in Malta may now not exceed 18 months. The European Court of Human Rights has stated that detention is only justified when it is for the purpose of facilitating removal (Schuster 2000).

Detention has enormous human rights implications for refugees and asylum seekers (Athwal & Bourne 2007; Bosworth & Guild 2008; Silove et al. 2000; Webber 1996). Research shows that detention creates uncertainty for asylum seekers (Athwal & Bourne 2007), with some preferring actual prison sentences as opposed to the indefinite incarceration represented by administrative detention (Khosravi 2010). Medical experts argue that the impact of confinement for refugees and asylum seekers is distressing:
Sequential recurrent trauma is much more likely to lead to long-term personality difficulties and problems in coping than one-off trauma such as, for instance, a car accident. This is especially the case when a person suffers a series of traumatic incidents, especially related to persecution and confinement, where the person does not have an environment to recover and the later experience mimics or replicates the earlier trauma. If the person has been persecuted and confined, and then escapes hoping for relief, and is faced with an enormous alien trauma, this exponentially compounds their mental difficulties. In such a case, detention becomes a highly important factor, and one couldn’t do anything much worse for the person. (Becker & Silove 1993: 85)

The UNHCR denounces the practice of detention, arguing that unless it is contained in national legislation that complies with international human rights standards, it should cease (UNHCR 2011). The UNHCR has issued guidelines on detention that stipulate that detention should be humane and periodically reviewed (Bhabha & Shutter 1994: 225). All of the refugee women participants in this study had experienced the policy of mandatory detention in Malta. Some had also experienced detention in Libya and often more than once.

Detention has important gendered dimensions. Considerable research has been undertaken on how the increasing use of incarceration has resulted in overcrowded facilities that are in the main built to the male model (Ashford 1993 in Bhabha & Shutter 1994). In the UK, administrative detention accompanies the imposition of visa requirements. Some of the experiences of women detained as a result of these provisions have been documented (Bhabha & Shutter 1994). Three Sri Lankan Tamil women were detained at an overcrowded detention centre near Heathrow Airport along with many other male detainees in non-gender segregated facilities. In another instance, 100 Tamils were detained on board an old English Channel car ferry, four of whom were women. The women on board the ferry were reportedly denied sanitary pads for two months (Ashford 1993 in Bhabha & Shutter 1994: 235). Detention also exposes women to particular risks of sexual violence and re-traumatisation (LIBE 2006).

In the US context, research has examined women’s experiences of detention and the expansion of the use of detention as a result of increasingly restrictive immigration procedures (Rabin 2009; Zeigler & Stewart 2009). In Rabin’s research, concerns about the conditions within detention have centred on medical and mental healthcare, security, communications and access to legal counsel, visitors, food and activities (2009: 712). Zeigler and Stewart (2009) have engaged standpoint theory to explore the lived experience of refugee women and asylum seekers in the US. However, their research relied on published and unpublished case law and NGO reports from the US, rather than empirical data.

While administrative detention has been the focus of this critique of the penalisation of asylum seekers and refugees upon arrival, two further examples of penalisation are worth noting. First,
provisions on Smuggling and Trafficking, dealt with separately at an international level (Di Nicola 2005), have criminalised the means of arriving in Europe for asylum seekers. These Protocols, mentioned in Chapter 4, focus on illegal immigration by organised groups (Di Nicola 2005). While these Protocols have been criticised widely for failing to recognise the complexity of forced migration and for representing a discriminatory regulatory framework (Askola 2009: 173; Grewcock 2003; Koser 2002; Segrave et al. 2009), of relevance here is the framework’s implicit message to asylum seekers: that the means used to get to Europe will be criminalised and punished. The second example is related to the first. The use of false documents to gain entry to the EU by some asylum seekers and refugees is resulting in an increased number of criminal prosecutions (Hales 1996b). There have also been instances where asylum applications of those who use false documents have been rejected (Bhabha & Shutter 1994). The penalisation of asylum seekers and refugees who arrive irregularly to seek asylum is exemplified primarily by administrative detention, but also by the criminal prosecution of the means of entering the country illegally and seemingly contradict the 1951 Refugee Convention.

| TENSION FIVE: DISRUPTING ONWARD MIGRATION AND THE POTENTIAL FOR REFOULEMENT: EXPEDITED REVIEW AND THE DUBLIN II REGULATION |

**Conceptual question:** The securitisation of migration has reduced opportunities to apply for asylum and increased instances of expedited review, raising the prospect of refoulement – which is prohibited by a key provision of the 1951 Refugee Convention. How can these be reconciled, and what is the gendered impact of limiting access to asylum to the country of first arrival in the EU?

The prohibition on refoulement is the cornerstone of the 1951 Refugee Convention, reflected in the inability of states to place reservations on this article (see Article 42.1). Non-refoulement is a concept that ‘prohibits States from returning a refugee or asylum seeker to territories where there is a risk that his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion’ (Article 33). The potential for an occurrence of refoulement, also termed ‘constructive refoulement’ or ‘neo-refoulement’, is of concern in the EU context (Fekete 2005).

The harmonisation of minimalist and restrictive asylum procedures across the EU has the potential to increase the incidence of refoulement (Freedman 2008). Whereas the international refugee protection regime places an onus on signatories to receive and assess applications from
asylum seekers, the legal trend now is to expedite claims where it can be determined that another country ought to provide a substantive review of the claim (Hailbronner 2007). The disruption and dispersal of legal protections owing to asylum seekers has become a recurring theme in Member States of the EU (Bloch & Schuster 2005). Disruption and dispersal are facilitated by readmission agreements that solidify a Member State’s legal responsibility not to review a claim, and to instead disperse asylum seekers to other Member States. For Member States of the EU, exporting securitisation of migration policy via the carrot of EU membership has smoothed the way for the conclusion of bilateral agreements that promote cooperation on dispersal (Duvell 2010; Koslowski 2001; Oelgemöller 2010). For some countries, such as Ukraine, it has created opportunities for incorporating favourable migration arrangements for its own citizens in exchange for consenting to readmission agreements with other Member States (De Haas 2007a).

The Dublin II Regulation is evidence of the growing reliance on regional agreements that seek to geographically contain people even after they are recognised as deserving of humanitarian protection. Freedman (2008) contends that the Dublin II 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 like those in the UK and Sweden. Although no panacea to the problem of persecution being understood in reference to the male model (Freedman 2008: 142), the existence or absence of gender guidelines may still impact on the likelihood of success for a woman asylum applicant. Research by Bloch, Gavin and Harrell-Bond (2000) concluded that the Dublin II Regulation disproportionately impacts on women through the disruption of family reunification. These provisions thwart possibilities for family reunification for all but immediate family members – an issue that in the context of conflict and forced displacement may result in the fragmentation of families and separation. These challenges are reinforced by restrictions on legal aid, which mean that asylum seekers cannot properly prepare their claims given the quality required to result in success (Athwal & Bourne 2007; Bosworth & Guild 2008). An emphasis on expedient preparation may disadvantage women’s claims of gender-related or gender-specific persecution. Disparities in determination procedures between EU Member States gives rise to an increased risk of refoulement (Freedman 2008). Again, most research on women’s experiences is based on court documents and NGO reports, or carried out by NGOs, both domestic and international.

CONCLUSION

This chapter has explored some of the key tensions that lie at the intersection of the legal frameworks informing the securitisation of migration and refugee protection. The tensions between the two frameworks have been enumerated according to five key areas. The first captures the tension between regimes of non-entrée such as visa requirements, carrier sanctions
and interdiction, on the one hand, and on the other, the fundamental premise of refugee protection – that people must cross an international border in order to apply for protection. Mechanisms of non-entrée are not new, but are central to the securitisation of migration. In relation to this, the question is asked: what is the gendered impact of these regimes of non-entrée and how do women experience them? This question is addressed in the next chapter on Exit, Chapter 6.

The second tension arises from the policy emphasis on warehousing asylum seekers and refugees in their region of origin. International refugee law contains no provision as to where an asylum seeker must claim asylum, but there is an increasing drive within EU policy to warehouse asylum seekers and refugees in their country or region of origin to prevent them from reaching and applying for asylum in the EU. Warehousing is not one of the ‘durable solutions’ conceived of for refugees, and the practice delays the realisation of refugee protection for many asylum seekers. This tension and its gendered dimensions are explored further in Chapter 7, on Transit.

Deterring asylum seekers and refugees from reaching the EU by diluting legal protection and reducing access to socioeconomic rights and entitlements encapsulates the third tension. Refugee protection guarantees access to certain rights and entitlements, many of which are either withdrawn or significantly emaciated in the context of the securitisation of migration. Chapter 8 explores how women experience this tension in the case study of Malta, and the penalisation of asylum seekers and refugees for irregularly entering the EU, which contrasts sharply with the provisions of non-penalisation for illegal entry contained in the 1951 Refugee Convention. Penalisation is primarily achieved through the practice of administrative detention, a policy that sees every asylum seeker who arrives in Malta subject to mandatory detention.

The final tension identified in this chapter, and further explored in Chapter 9, is that of the prohibition on refoulement. Increased instances of expedited review, and the reliance on dispersing legal responsibility for asylum seekers and refugees, raise the spectre of refoulement. Here Hyndman’s (2000) distinction between ‘supracitizens’ and ‘subcitizens’ resonates powerfully; the experience of living in the ‘Area of Freedom, Security and Justice’ known as the EU is not the same for those who apply for refugee protection.

Debates around the issues discussed above often occur between lawyers who have limited access to empirical research and in particular qualitative research with women who experience these tensions in their everyday lives. Having considered the tensions in law and policy terms at an international and domestic level relevant to Malta, the next chapters undertake a unique exploration of these tensions through a qualitative study of how women experience them. This gendered approach aims to build understanding of these tensions through the lived experience of women exiting their country of origin and arriving in Malta to seek refugee protection, revealing
how the securitisation of migration impacts their experiences of exit, transit, arrival and onward migration.
CHAPTER 6: SHAPING VIOLENT AND CIRCUITOUS PATHWAYS – WOMEN’S EXPERIENCES IN EXITING SOMALIA

One of the objectives of the EU is the gradual creation of an area of freedom, security and justice, which means, inter alia, that illegal immigration must be combated. (EC 2002: 62)

As this policy pronouncement makes clear, the battle against illegal immigration is intrinsic to the EU project of creating an area of ‘freedom, security and justice’. The securitisation of migration provides some of the key machinery needed to achieve this objective, using both external and internal border controls. This chapter examines the operation of these controls at the key stage of exit from the perspective of the participants in this study. The central conceptual question under analysis in this chapter is the following: if refugee protection is premised on crossing international borders, what is the gendered impact on women who exit Somalia, to flee persecution, of the EU’s efforts to ‘combat’ what is characterised as ‘illegal immigration’?

In this research, ‘exit’ is defined in the context of women’s experiences within the national borders of Somalia. However, ‘exit’ may also be understood subjectively as referring to various aspects of the migration process, and as applying to the whole journey from leaving one’s home to settlement. The definition of exit as within the national borders of Somalia was selected for two main reasons. First, transnational migrant subjects interviewed in this study did consider what happened to them within Somalia – i.e. at the stage of exit – to bear a separate, albeit interdependent, relationship to the rest of migratory journey. Yet this is not to assume that their migratory journey is necessarily linear (see Massey 1994), or that exit only occurs at the start of this journey. Second, the definition of ‘refugee’ provided within international law necessitates that an asylum seeker cross an international border as a result of treatment they have received within the national borders of their country of origin that amounts to persecution or fear of persecution. It is acknowledged that this approach narrows the definition of ‘exit’ as one that confines its remit to geographical borders, and by implication reinforces the international sovereign state-based system. However, unpacking the impact of the securitisation of migration requires a common language. Therefore, the same territorial parameters are engaged and the definition of ‘exit’ adopted here is confined to the stage of the journey that occurs within Somalia’s national borders.

7 See Article 1A, 1951 Refugee Convention.
Speaking to transnational migrant subjects about their experiences of exiting Somalia provided insight into the complex and layered decision-making processes that precede women’s migration to Malta. These decision-making processes involve consideration of a range of interdependent factors including safety, sexual violence, children, relationships, the nature of the journey and women’s expectations of Europe. These factors are explored in this chapter, following an analysis of the protracted conflict in Somalia and the role of the EU in this conflict. Some transnational migrant women were found to be more in charge of their decision to exit Somalia than others, and this is presented here as the emergence from the data of two ‘ideal types’. Securitisation of migration policies such as deterrence and risk-reduction are analysed against the data which showed that these women possessed only minimal knowledge of the EU beyond associating it with a place of safety. Finally, the impact of visa requirements and carrier sanctions will be analysed as functionally mobile borders that bring the EU border to Somalia and operate to channel women into extra-legal pathways to enter the EU.

PROTRACTED CONFLICT IN SOMALIA

The great majority of female transnational migrant subjects who arrived in Malta and sought asylum in 2008, 2009 and 2010 had fled Somalia (2010). Somalia is located in the Horn of Africa, see Figure 6 above. Just over 18 per cent of the total asylum seeker population in 2009 were
women (NSO 2010). The number of Somali female applicants was 297, or 67 per cent of the total number of female asylum applicants as represented in Figure 7 below. Nigeria had the next highest proportion, with 72 female applicants for asylum, or 16 per cent of the total (NSO 2010). This section explores some of the context behind these statistics by examining the conflict in Somalia.

The situation in Somalia is routinely described as one of the world’s worst humanitarian and security crises (FIP 2011; HRW 2008; ICG 2008: Executive Summary; Menkhaus 2004: 4; UNDP 2001; UNIE 2010). At the present moment, international attention is focused on the devastating drought impacting Somalia and other parts of the Horn of Africa (BBC 2011b). A major dynamic affecting the famine and famine relief in Somalia, historically and now, is the protracted conflict embroiling Somalia and parts of neighbouring countries (Allie 2011; De Waal 1997). Somalia has had no effective government since 1991, when Siyaad Barre’s government was overthrown after 16 years in power (ICG 2009). The country has since then been fractured, with the north declaring itself the Republic of Somaliland in 1991, and Puntland, in the north-east, becoming semi-autonomous (ICG 2009). In the years preceding the famine, international attention was narrowly focused on the issue of piracy in Somali territorial waters, while violence within the country (which, unlike piracy, primarily affects Somalis) reportedly worsened (ICG 2009; Middleton 2008). The protracted conflict in Somalia has had a devastating impact and has often failed to attract commensurate levels of international attention or assistance.
The international bordering of Somalia and the involvement of external actors has played a significant role in driving the conflict. Prior to the ‘scramble for Africa’ by European powers in the late 19th century, the Somali region had been governed by a clan-based system (Menkhaus 2010). Britain colonised the north of the country while Italy administered the South. The actual boundaries of the ethnic Somali region, however, are understood to be much larger than those of the country (Hyndman 1997). When Somalia declared itself a Republic in 1960 and reunited the British Somaliland with the territory administered by Italy in the south, many ethnic Somalis remained outside the official borders in Ogaden in Ethiopia and the Northern Frontier District of Kenya. This explains why two participants in this study identified as Somali, even though they resided in Ethiopia (See Characteristics of Participants – Table 2 on page 28). More still resided in Djibouti, at that time ruled by France (Lewis & Mayall 1996). Even though a UN Commission determined that residents of Northern Kenya wanted to be reunited with Somalia, Kenya and Britain refused, resulting in the Shifta War of 1963-67 (Hyndman 1997: 163). The Organisation of African Unity in 1963 called on all African governments to respect the frontiers they had obtained at independence and the Republic of Somalia eventually renounced its claim to the Kenyan region in 1967 (Lewis & Mayall 1996: 97).

Cold War politics greatly affected Somalia (Hyndman 1997; Lewis & Mayall 1996; Menkhaus 2010). With the assistance of the Soviet Union, the Somali dictatorship under Siyaad Barre amassed sufficient arms to become the largest army in Africa (Ramsbotham & Woodhouse 1999). Neighbouring Ethiopia and Eritrea aligned with the US, but when Somalia invaded the Ogaden region of Ethiopia in 1977, both countries switched alliances. When Somalia lost the war with Ethiopia, some 300–400,000 refugees – the majority of whom were Somali Ethiopians – returned to Somalia (Menkhaus 2010). As Somalia was in favour with the US as a result of the African country’s strategic importance during the Cold War, the US Government delivered aid for Somalia’s refugees and citizens. Studies have found, however, that in the 1980s Somalia witnessed the worst example of diverted food aid on record (see Pailthorp 1994 in Menkhaus 2010). This problem was ignored by the US until the end of the Cold War, when it withdrew its support from Somalia. Without US support, after 1991 civil war and famine descended on the country, as Barre’s troops withdrew to Mogadishu and implemented a scorched-earth policy en route.

To address the humanitarian calamity produced by both the civil war and the famine, the United Nations Security Council stepped in with UNITAF (United Task Force – also known as Operation Restore Hope), led by the US. Five months later this transitioned to become the United Nations Operation in Somalia, or UNOSOM, tasked with the mandate to ‘establish a security environment for humanitarian relief operations in Somalia’. This was replaced by UNOSOM II in 1993–95. The UN involvement in Somalia cost US$1.5 billion and is described as a ‘product of the new
international climate created by the end of the Cold War’ (Lewis & Mayall 1996: 94). It was the first time an internal humanitarian crisis, and statelessness, were characterised as a threat to international peace and security warranting intervention. There was eventually armed resistance to UNOSOM, as it was seen to be aligned with the West. Following several incidents in which peacekeepers were killed, and with questionable public support, UNOSOM was wound up (Hyndman 1997).

In providing an appraisal of the current situation, Menkhaus (2010) acknowledges the presence of tense relations between emergency relief operations and stabilisation interventions in Somalia, both of which have been continuing in the country for some time. Since 2007, Menkhaus argues, a series of events have created the ‘perfect storm’:

Somalia became the site of unilateral (Ethiopian) and multilateral (African Union) military intervention, a destructive insurgency and counter-insurgency campaign, intensification of Al-Qa’ida activities and counter-terrorism actions by the United States, an epidemic of piracy, massive displacement, and a humanitarian crisis deemed the worst on the planet. (Menkhaus 2010: 320)

As described above, the situation in Somalia is one of complex emergency. Caught up in this ‘perfect storm’ have been millions of civilians. In 2008, 3.5 million were in need of emergency food relief (Menkhaus 2010). This has increased dramatically to 10 million since the most recent famine took hold (BBC 2011b).

The Transnational Federal Government (TFG), which has had official recognition as the presiding authority in Somalia since 2004, has a mandate to prepare the country for elections in 2011 (CIA 2011; FfP 2011; ICG 2008; UNDP 2001), yet at the time of writing this has still not occurred. The TFG had struggled to establish itself in the capital Mogadishu until 2008. In 2006, war broke out in Mogadishu between a ‘US backed coalition of militia leaders’ and a coalition of Islamist militias that came to be known as the Islamic Courts Union (ICU). The ICU was victorious in 2006, and the Islamists were allowed to consolidate the capital and territory in south-central Somalia. The gradual radicalisation of the ICU prompted an Ethiopian military offensive in 2006, which forced the ICU into exile. The Ethiopian military occupied Somalia in 2007–08. To enable the Ethiopian troops to withdraw, AMISOM (African Union Mission in Somalia) peacekeepers arrived to stabilise security in south-central Somalia, which later led to the TFG becoming the presiding authority in Mogadishu (ICG 2008).

Notwithstanding the present famine, the situation for civilians in Somalia is extremely dangerous; there are reports of Ethiopians shelling locals and TFG soldiers terrorising locals with ‘widespread assault, rape and extortion’ (Menkhaus 2010: 332). The impact of the conflict is
reflected in statistical accounts of human development. In 2009–10, the country’s rating sat at
the most severe end of the European Commission’s Humanitarian Aid and Civil Protection
Department’s (ECHO) Vulnerability and Crises Index (ECHO 2010); and life expectancy was at
46.2 for the period 2002–05 (EC 2011b: 4). Somalia has one of the highest infant and maternal
mortality rates (CIA 2011; WHO 2008b). Half the population are under 18 (EC 2010: 16), and 71
per cent lack sustainable drinking water (UNDP 2009). An estimated two generations of Somali
young people have missed out on public schooling (UNIE 2010), and the literacy levels of
women are understood to be among the lowest in the world (Gardner 2007).

Violence, insecurity and instability in Somalia have created significant numbers of internally
displaced persons (IDPs) inside Somalia, and have contributed to expanding refugee populations
in neighbouring countries (UNHCR 2011; UNIE 2010). Prior to the famine, there was an
estimated 1.4 million IDPs within the country (UNIE 2010); this number is thought to have risen
to closer to 2 million since the famine (BBC 2011b). The number of Somalis residing in
neighbouring countries has swelled, but it is still only a minority who make it out of the country
and apply for asylum. In the first seven months of 2010, 50,065 fled to neighbouring countries
and this number doubled in the first half of 2011 (UNHCR 2011). At July 2010, there were
680,000 Somali refugees in Kenya, Yemen, Ethiopia, Eritrea, Djibouti, Tanzania and Uganda
(UNHCR 2011). In 2005, of the estimated 668,000 applications for asylum or appeals that were
submitted to governments or the UNHCR in 149 countries (the majority of which were in Europe),
applications from Somalis totalled 36,200 (EC 2011b: 1). After Afghanistan and Iraq, Somalia
generates the most refugees in the world (UNIE 2010).

In providing this conflict analysis, I have set out to avoid cultural essentialisms and cultural
stereotypes around ‘anarchy’ and ‘lawlessness’, for which many conflict analyses on Somalia are
criticised (See Besteman 2006 for a critique of cultural stereotyping in conflict analysis on
Somalia). Rather, the situation is complex and external actors have played a major role in
creating and sustaining the dynamics (De Waal 1997). Part of the problem in providing such an
analysis is that the situation is so violent in the country that many organisations, including the
UN, the UNHCR, independent researchers and others, have been unable to conduct field-based
research there (Crisp 2000, 2004; Hagmann 2005). In 2008, Somalia suffered the highest
amount of humanitarian casualties in the world (Menkhaus 2010). There were reports that
members of the international community had become targets of violence within the country
(HRW 2008; ICG 2008). Even the UN moved their staff to the north and the World Food Program
ceased operations in the country in 2009 (Menkhaus 2010). As a result, most conflict analysis
remains incomplete. Similarly, it has not been possible to travel to Somalia and interview people
there because of the pervasive insecurity.
Emerging scholarship by Hagmann (2005) provides a more thorough analysis of the power relationships and networks of control that have developed in the country since the 1990s and subsequently intensified. Rather than reduce the situation of violence and insecurity in Somalia to one of a ‘failed state’, this research argues for the benefits of decentring statist conceptions of violence. Hagmann (2005) asserts that the focus of external actors on Somalia’s ‘statelessness’, fails to recognise that ‘Somalis have brought into being a complex laboratory of fluid, localised, and contested political authorities’ (2005: 535). In the absence of state structures, Hagmann argues, Somalis have modernised and effected ‘self-determined development’ without the support of aid or other ‘associated foreign patronage’. More empirical research is required to document and analyse these local institutions and their gendered impact. The next section turns to examine the approach of the EU to the conflict in Somalia.

THE EU APPROACH TO SOMALIA

The EU approach to Somalia recognises the humanitarian crisis that exists within the country, and the potential for instability within the wider Horn of Africa region to affect the EU. Somalia is of strategic economic importance to the EU. Its proximity to the Red Sea waterway, one of the main trade and energy shipping routes to the EU, underscores the region’s importance (EC 2006). A European Commission strategy paper on peace, development and security in the Horn of Africa states:

Stability in the Horn of Africa is also strategically crucial for EU security. Cross-border dynamics, such as illegal migration and trafficking of arms, drugs and refugee flows, are factors contributing to instability and tensions that spread throughout the Horn of Africa and beyond, and could even reach the EU. The Horn has come under increased international scrutiny in the war against terrorism due to the spreading of religious extremism and ideological influences from neighbouring sub-regions. Prevailing insecurity in the region has also contributed to a culture of lawlessness, banditry, and warlords. As a result the boundaries between political conflict, criminality and terrorism tend to be blurred. (EC 2006: 5)

Reflecting Huysmans’s (2006) securitisation of migration themes, the European Commission positions Horn of Africa refugees on the same security continuum as illegal migration, drug trafficking, terrorism and other international crimes (EC 2006). Although refugee flows are distinguished from other forms of mobility, they provoke the same security response and are constructed as a threat to EU stability and security.

Further EU policy pronouncements demonstrate a commitment to Somalia in particular as an important state within the Horn of Africa, and empathise with the human rights challenges faced
by Somali people. The Joint Strategy Paper on Somalia, produced by the European Commission, states that ‘Somalia is considered a test case for the stabilisation of the broader Horn of Africa region’ (EC 2010: 8). The Joint Strategy Paper suggests that the pressures placed on the civilian population as a result of the conflict are to be understood as follows:

After sixteen years of civil war, Somalia faces the key challenges of building peace and security, establishing democratic processes and institutions and strengthening human rights. Poverty remains acute and support for the development of livelihoods is a priority. Social services are rudimentary; particularly in South Central Somalia, service provision is fragmented and ad hoc due to lack of security and institutional structures. Basic infrastructure has deteriorated markedly since the collapse of the last national government in 1991. Inequality remains a concern; women and girls continue to be socially excluded. The private sector has survived and to some extent flourished in the near anarchic environment of the past decade and a half; however, for further growth and inward investment, legal and regulatory frameworks have to be developed. (EC 2011b: 6)

The EU acknowledges that the situation in Somalia is complex, protracted and that access to services is poor, poverty pervasive and gender discrimination a central issue. The EU sees itself as the ‘most important development partner in the Horn’ (EC 2006: 5). To this end, according to ECHO, the European Commission allocated €45 million in humanitarian aid to Somalia in 2009, increased from 9 million Euros in 2005. The key focus of ECHO support has been directed at ‘health, nutrition, water and sanitation, livestock, food security and support for the Internally Displaced’ (ECHO 2010). This is a further indication that the EU recognises the humanitarian crisis in Somalia.

The EU has sought to foster links between migration and development in the Horn of Africa through the External Dimension policy and program, which was formally embraced at the Tampere meeting of the European Council in 1999 (Boswell 2006). External dimension policies promote an ‘integrated approach’ between foreign affairs and ‘Freedom, Security and Justice’ in the EU. Linking migration and development policy involves addressing the root causes behind the migration of asylum seekers to the EU. Castles in particular is a proponent of such root causes theory (Castles & Miller 2009). To date however, research on the import of linking these two policy areas is divided (Boswell 2006). Some have argued that there is little evidence to suggest that an improvement in development standards within countries of origin will stop or reduce migration flows (De Haas 2006). Indeed, de Haas (2007b) claims that this may actually increase migration: greater connections between those in developed/developing countries can result in greater aspirations to migrate.
There is frustration among human rights organisations and some scholars that the EU is supporting the TFG when evidence of its violence and incompetence is extensive. HRW (2008) has noted the EU’s approach as one of supporting the TFG despite its indiscretions:

This approach has, however, led to a disastrous effort by the European Commission and other donor states to push for direct and unconditional financial support for TFG security forces responsible for serious human rights and humanitarian law violations. (HRW 2008: 97)

The European Commission has provided considerable support to maintain the TFG, which has also gained the support of the UN and other key donors (ICG 2008). Indeed, the support of the EU has been instrumental in shaping transitional governance in Somalia. The International Crisis Group (ICG) goes so far as to credit the establishment of the TFG in 2004 with the increase in the EU’s engagement in Somalia (ICG 2008: 27). The EU has allocated 254 million Euros to the ‘political reconciliation’ process involving peace talks in Djibouti, which began in May 2008. Menkhaus (2010) is critical of the UN and other donor states in continuing their support for the TFG and seeing this as the only option available to improve the situation in Somalia. Critics of the EU have suggested that it may be trying to steer a political solution to the conflict that marginalises Islamists (ICG 2008: 27, ICG 2011). The ICG now urges donors to investigate and stop supporting corrupt officials (ICG 2011). Of the US$213 million pledged to Somalia by the UN, EU and African Union conference held in Brussels in April 2009, ‘little has reached Somalia’ (HRW 2011b). Disturbingly, despite the EU’s support of the TFG, and the considerable provision of aid, the TFG has put obstacles in the way of humanitarian operations in Somalia, has implemented bureaucratic hurdles that have blocked or delayed aid, and has even carried out physical roadblocks (ICG 2008). The TFG are said to resent aid going to IDPs who, it claims, are part of the insurgency (ICG 2008: 19).

WOMEN’S DECISION-MAKING ABOUT EXIT

This section examines the impact of the securitisation of migration on transnational migrant subjects through the prism of women’s decision-making in relation to exiting Somalia. Traditional scholarship has been criticised for defining women’s migration as merely associated with and focused on the migration decision-making of their male counterparts (Nolin 2006). Interviews with Somali women refugees residing in Malta revealed several layers of complexity in these decision-making processes. Women talked about their approach being underscored by the volatility of the situation in Somalia. They described their decisions as being influenced by a number of factors, and often other people with identifiable interests. Aziza, a 23-year-old who had been living in Malta for four years, explained the factors influencing decision-making around exit:
Some women cannot come because they have children. Some leave to have more opportunities and leave the children there. Some are searching for more opportunities in life. Some send their husbands first and they plan to follow. Some of them are old, some of them are kids, and their mother protects them from war. (Aziza)

Aziza’s comments demonstrate how decision-making around exit is gendered and is different for each woman. Women are agentive in decision-making around exit, with some sending their husbands or their children first, while the dangers presented by daily life in Somalia may mean that women are sent as a priority over their male counterparts. Additionally, women have varying degrees of control over the decision to exit Somalia: some women are more active decision-makers in the process, while others are more at the receiving end of decisions made by others. The layers of complexity in women’s decision-making is reflected in the diagram in Figure 8.

![Layers of complexity in women’s decision-making around exiting Somalia](image)

**Figure 8 Layers of complexity in women’s decision-making around exiting Somalia**

This section will explore the two main factors that women talked about as influencing their decision-making around exit: that is, insecurity and gender-based violence. This is followed by an analysis of how these decisions were made and whose interests they reflected. Documenting and analysing women’s expectations of Europe raises doubts as to the effectiveness of deterrence policies in preventing their exit. Moreover, the risk-reduction techniques engaged in by the EU operate as functionally mobile borders that bring the EU border to Somalia. The norm for participants in this study was not a visa stamp in their passport or an aeroplane ticket that took them directly to the EU, but a long and circuitous route to the southern EU border, as will be further explored in Chapter 7.
INSECURITY AND GENDER-BASED VIOLENCE

All participants raised the volatile security situation as a factor influencing their decision to exit Somalia. None of the women interviewed said that they exited Somalia to seek ‘refugee protection’. Instead, they put their reasons in terms that expressed a desire for safety, improved protection and security. These women indicated that life was precarious in Somalia and fatalities common:

Any day you could die in Somalia. (Hibo)

Hibo was a 33-year-old woman who left Somalia in 2007 and came by herself to Malta. She had been in Malta for four years and had applied to go to the US and to other EU Member States on resettlement or relocation programs, but had so far been unsuccessful. She had children back in Somalia and was working to support them in Malta. She had had an operation on her arm to try and resolve physical damage caused by a bomb that exploded near her in her home town of Mogadishu. She showed me her upper arm which was scarred and disfigured. Hibo was one of many participants from Mogadishu.

While the Somali refugee women I interviewed stated that they were from all parts of Somalia, a high proportion – approximately two-thirds – came from Mogadishu. Women who identified as being from Mogadishu spoke about the dangers experienced there for men, women and children. The often indiscriminate nature of the violence meant that it was dangerous for all people. During the interviews, I did not provoke disclosures from the participants about the nature of the violence experienced, and it is acknowledged that this information would not be offered spontaneously. However, the women described their experiences of violence in more general terms:

I am from Mogadishu. There are many people here from Mogadishu because Mogadishu is very dangerous. (Syrad)

Mogadishu is dangerous for everyone – woman, man, child, baby. (Jawahir)

Mogadishu, the capital of Somalia, is a city described by the key UN aid agency responsible for coordinating conflicts and disasters, the Organisation for the Coordination of Humanitarian Affairs (OCHA), as one of the worst-hit areas of the Somali conflict (ICG 2008: 18). In the early months of 2008, tens of thousands of civilians were leaving Mogadishu as a result of the violence (ICG 2008: 18). Fleeing Mogadishu has been associated with considerable gender-based violence against women (HRW 2009). NGO and international government organisations report gender-based violence in Somalia involving men and women (HRW 2008; UNIE 2010; US 2009,
For men, there are reports of systemic killings and coercion to join militia groups (Gardner 2007). There are also reports of men being ‘forced at gunpoint to perpetrate and to witness rape and other sexual violations against women and girls’ (Gardner 2007: 3).

The prevalence and nature of gender-based violence in Somalia was raised by some of the women interviewed for this study. One participant interviewed spoke about the civil war and its particular impact on women, raising the prevalence of sexual violence and the increased spectre of violence against women:

There is a civil war in Somalia. Women are weak and it is women who feel the impact most of war. They get raped and a lot of things happen to them. I decided with my husband that I would go first. He went with my children to Ethiopia after me. (Sena)

Sena was 29 years’ old and had recently been reunited with her husband, who had travelled via Ethiopia to China and then to the Netherlands. Her children were staying with relatives in Ethiopia. Sena’s comments echo existing research findings that women are disproportionally affected by the conflict in Somalia and face extensive sexual violence (HRW 2008; Jacobson 1999; UNIE 2010; US 2009, 2010a). Her statement also points to the systemic nature of sexual violence against women in Somalia.

The dispersal of violence and the lack of any accountability mechanisms in Somalia is seen by HRW (2008) as exacerbating the danger for women. The organisation reported the case of a 14-year-old girl who was abducted at gunpoint by three armed men in camouflage uniforms, driven to a house outside Mogadishu, and raped and beaten over the course of a number of days. Her mother paid a ransom for her release. HRW report that neither the ‘girl nor her mother had any idea who the men were and whether they were even linked to a party to the conflict’ (2008: 42-3). This inability to distinguish between police and others as perpetrators meant that the incident was not reported. HRW also documented the case of a pregnant teenage girl who said she was gang raped by TFG forces. In another case, a young man, said he witnessed his sisters and mother being raped by Ethiopian soldiers after they had killed his father (HRW 2008: 7-8). Indeed, the dispersal of violence has been a key finding of the research conducted by HRW (2008).

The law enforcement and the NGO participants interviewed in Malta for this study all said that many Somali refugee women had direct experiences of sexual violence. A law enforcement participant working in refugee determination in Malta confirmed that women’s narratives of persecution often involved reports of sexual violence experienced in Somalia:
With the Somali women there are experiences of rape, lots of armed groups. They separate a village and will make everything available to them including the women. (LE 1)

Scholars point to a long history of the widespread assumption that women’s sexuality is a spoil of war (Askin 1997; Mackinnon 1994), as is inferred in the above quote. Despite the phenomenon of rape in war existing for centuries (Brownmiller 1975; UNDW 1998), only in recent decades has scholarship begun to address its occurrence, impact and causes. Traditionally, rape as a crime in war has been underreported and unprosecuted (Meron 1993; Sellers & Okuizumi 1997), although this is gradually changing, most notably at an international level.

What the above statement by the law enforcement participant further highlights is that women, individually and even as a group, are in need of protection for their status as women; they represent a commodity made available to the victors alongside other resources in the village. This understanding underscores the heightened vulnerability of women to sexual violence and their particular protection needs. It also highlights the need to ensure that women in danger of sexual violence have access to safe passage to exit (in this case, Somalia), and live free from this threat or the direct experience of sexual violence. Such circumstances give rise to the internationally recognised legal norm of refugee flight across international borders to seek freedom from persecution in another country.

THE IMPACT OF SEXUAL VIOLENCE ON DECISIONS TO EXIT

In talking to Somali transnational migrant subjects security considerations, and in particular sexual violence, was a major impetus in influencing decisions to exit Somalia. Indeed, this study observed that sexual violence fundamentally shaped the decisions of individuals and families to send women out of the country in search of safety. An NGO participant interviewed in Malta expressed the view that younger women were being ‘forced’ to leave by their families on account of this violence:

They are forced to leave because of the situation in Somalia and often sometimes also the families push the young girls to go because they are scared of the situation there. (NGO 2)

Here it is understood that it is in a young woman’s interest to exit as a result of the significant risk of gender-based violence. Additionally, it is in the family’s interest for young women to exit as it saves the family from the fear that they will be harmed if they remain in Somalia. As will be discussed further below, families and individuals are involved in strategic decision-making around exit to various extents as a result of the violence against women in Somalia. It is also
important to note in the above passage that the NGO worker is simplifying women’s decisions to exit by stating that women are coerced to leave. In contrast, as this section explores, a multiplicity of approaches to exit are adopted by women. The role of coercion cannot be discounted but is not singularly represented across the experiences of the women participants in this research.

Some of the women interviewed indicated that there was a priority given to women exiting as a result of the violence and insecurity prevalent in Somalia. For women, experiences of insecurity were so acute that there was a high priority placed on women exiting before their male family members. These gendered decisions were described by one interviewee in the following terms:

Men prefer to stay but send the women first. They send the women to safety usually with one child or pregnant. The men stay behind and the women will go first because it is not safe for them in Somalia. (Sena)

Sena’s comment highlights how strategic decisions about exit are made and how sexual violence is a factor in decision-making. Women are sent first so that they can be spared exposure to the violence. This construction positions women and children as more vulnerable and men as comparatively able to withstand the violence, and reinforces gender stereotypes concerning women’s vulnerability. Yet it also suggests that women face a greater threat of persecution.

Sena’s statement also indicates that strategic decisions are made about which child will go with a woman when they leave Somalia. Women will ‘usually’ go with ‘one’ child, or pregnant. Sena’s two children did not go with her, but stayed with her husband in Somalia until they fled to Ethiopia where they remained at the time of the interview. Ayan, a 22-year-old woman whose husband had made the journey with her to Malta, had arrived in Malta pregnant.

I left my first child with my mother in Ethiopia and then decided to have the second baby here. I arrived pregnant in Malta. It was not safe to bring our first child with us to Malta. (Ayan)

The dangers posed by transit prevented Ayan and her husband from bringing their first child with them to the EU. Instead, the children stayed with her mother in Ethiopia. The interviews did not cast further light on how these decisions are made. This practice of women arriving in the EU pregnant has attracted scholarly attention within Member States of the EU. Scholars have linked the arrival of pregnant women with legal rulings that provide for children born in a Member State to obtain citizenship to that state (Kennedy & Murphy-Lawless 2003). This has been the law in Ireland since 1990, when an Irish court ruled that a parent of any child born in Ireland may apply for leave to remain. This ruling was followed by the Good Friday Agreement in 1998, which
entitled all children born in Ireland to Irish citizenship. Subsequently, there was a reported spike in births to non-Irish citizens which peaked at 20 per cent of the total number of births in Irish hospitals (Kennedy & Murphy-Lawless 2003: 40). This policy was changed in 2005 so that children receive the legal status of their parents, subject to some exceptions (CI 2011). Parents who are foreign nationals must prove a ‘genuine’ connection to Ireland, evidenced by having lived there for three out of the past four years prior to the child’s birth. Malta’s provisions are similarly restrictive. Chapter 9 continues the analysis of women’s mobility and childbirth in other Member States.

Sexual violence has numerous consequences for women (Healey 1995) and can be seen to shape decision-making around exit for some of the women interviewed in this study. The impact of rape in conflict is potentially acutely stigmatising: it often results in communal ostracism of the victim and even punishment for being the victim of the crime and thus offending familial or communal honour (Musse, 2004; HRW 2009c). A law enforcement participant involved in refugee determination in Malta said that community responses to forced pregnancies resulting from rape had at times resulted in women exiting Somalia in danger of their lives:

Some Somali women claim they were raped and then were pregnant. They then have the baby out of marriage and then the family is against them and they try to kill them. (LE 2)

As this quote makes clear, rape can force women to leave their communities as a result of stigmatisation. Women are thus depicted in a double bind: first, enduring sexual violence, and second, enduring the reactions of community and family that ostracise them further. Their exit is therefore driven by the threat of persecution within their own communities, which they understand could cost them their life. In this context, women’s exit can also be understood as in the interests of their families, resulting terms of the ‘dishonour’ brought upon them by their pregnancy out of marriage. Their decision to exit is thus driven by stigmatisation and its consequences for them and their families.

**WHOSE DECISION TO EXIT?**

Examining women’s decision-making around exiting Somalia draws the assumption of individual criminal responsibility into close inspection. The construction depicted in dominant media and government discourses suggests that asylum seekers, often not ‘genuine’, make individual rational decisions to choose the EU as a destination and then target EU borders to seek entry (Cohen 2003). The official government responses to their arrival are administered in both individual and collective criminal terms; for example, all transnational migrant subjects arriving in Malta without the necessary legal documents are judged to have committed a crime. Asylum
seekers are attributed with individual criminal responsibility that is collectively administered, initially resulting in all asylum seekers being placed in mandatory detention.

It was apparent from this research that women had varying levels of control over their exit. It is important to note here that to observe a requirement of the MUHREC, this study did not talk to women about people smugglers and their role in relation to exit. As a result, this study only uncovered the roles played by individuals, family and, as is discussed below, family friends.

Women’s decision-making processes reflect a gendered politics of access and mobility. This research lends support to Massey’s (1993) contention around the ‘politics of mobility and access’ – that different groups have differing access to mobility:

Some are more in charge of it than others; some initiate flows and movement, others don’t; some are more on the receiving end of it than others; some are effectively imprisoned by it. (Massey 1993: 62)

Analysing the data generated from the interviews with transnational migrant subjects two ‘ideal types’ within Massey’s spectrum are identifiable. The first ‘ideal type’ is that represented by Haban. Haban was chiefly involved in controlling her decision to exit Somalia. Her agency was clearly exercised in making a strategic judgement to exit. At the time of the interview, she was a 29-year-old woman who was due to go to the US on the refugee resettlement program after being in Malta for three years. On her decision to exit she said:

I left Somalia to get a better life. There is no life in Somalia. I have four children and three of them still live in Somalia. I brought one child with me on the journey and the others live with my family in Somalia. Somalia is not safe. (Haban)

Haban’s description reveals the degree of control she exercised in deciding to migrate. The danger associated with daily life in Somalia made it impossible for her to see a future there. Insecurity and instability drove her decision to exit and she made an assessment to take one child with her when she left. Haban initiated her exit and talked about it in ways that suggested she was in control. Many other participants also talked about their agency in deciding to migrate and described this decision as being driven by them, most commonly as a result of their exposure to and experiences of violence in Somalia. Aziza, quoted at the start of this section on women’s decision-making, had experiences that can also be categorised as the first ‘ideal type’. She made the decision to leave and left her three children with her family in Somalia. She spoke about the danger of everyday living in Somalia and her desire to build a future in the EU, where she had relatives. She was destined, however, to go to the US as part of its Resettlement Program. Aziza, like Haban, spoke about initiating her exit from Somalia.
The second ‘ideal type’ involves women exercising less control over their decision to exit Somalia. For these women, who are often girls or young women, exit is something they are rallied into by their parents, who fear their child’s exposure to violence in Somalia and want to see them exit to seek protection in another country. On Massey’s spectrum, they are more on the receiving end of decisions by others, but are no less agentive. Pia’s experience reflected her positioning as more on the receiving end of decisions made by others. Pia was 22 years of age when I interviewed her in Malta. She had been in detention for seven months but had been released from detention two months prior. She spoke of her decision to exit Somalia:

Where I am from, Mogadishu, everyday is dangerous. My mother made the decision for me to leave because of the violence. I was sent because I am the youngest in the family. I am the youngest of five. I miss them and I speak to them on the phone. I miss them so much. I have been interviewed for resettlement to the United States and I hope in the future they will come to be with me in America. (Pia)

Pia’s parents sent her to the EU because of the situation in Somalia. They recognised she was vulnerable to violence, so made the strategic decision to get her out. Pia’s personal narrative correlates with statistics collected by the Office of the Refugee Commissioner that indicate a relatively high number of young female transnational migrant subjects are arriving in Malta and applying for asylum, as the graph in Figure 9 indicates.

Figure 9. Applicants for asylum, Malta 2009. Data compiled by the National Statistics Office (NSO 2010).

Although this data includes asylum applicants from other countries as well as Somalia, it correlates with the trend emerging from the interview data that young women are sent out of Somalia. In 2009 applications for asylum by age show that women comprise approximately half
of all people aged 0–17 arriving in Malta (NSO 2010). These statistics change dramatically in the 18–34 age group. This research project did not interview women under the age of 18 so the reasons for their arrival in Malta are not covered here. Viewed alongside Pia’s narrative, however, this data may indicate the prevalence of families sending their daughters away from Somalia to reach safety, although this is an area where further research is required.

The notion of parents/families sending their children to safety in Europe has generated a considerable amount of policy unrest within the EU over the prospect of ‘anchor children’ – children whose parents have sent them in advance to enable the parents’ later migration through family reunification provisions (Engebrigtsen 2003). The idea of ‘anchor children’ features prominently in policy in Norway, where the focus is on stopping the phenomenon. An absence of reliable statistics on child migration makes assessments of the prevalence of this practice difficult. However, writing in 2003, Engebrigtsen argues that in Norway only a small number of child migrants apply for family reunion. Notably, as a result of the implementation of complementary forms of protection within the EU that contain reduced rights, only those granted refugee status may apply for family reunification. Asylum seekers who receive subsidiary or lesser forms of protection are unable to apply for family reunification, a matter further explored in Chapter 8.

The impact of trauma can lead to women being less involved in the decision-making to exit Somalia, and these women are also characterised as falling into the second ‘ideal type’ category. Amina, a participant who left Somalia, can be seen in this light. Close family friends organised Amina’s exit as a result of her experiencing trauma following a family tragedy:

I can’t remember much of the journey out of Somalia to Libya, although I know it took me five months to get to Libya. I left Somalia in 2002, after both my parents were shot. I left immediately. My father’s friend organised the journey for me. Because of my head at the time, I can’t recall most of my journey. (Amina)

These acts of violence prompted a family friend to make decisions on Amina’s behalf when she said she was too traumatised and grief-stricken to do so. Seemingly, therefore, she did not possess the same degree of control over or engagement in the decision to exit as did some other participants, and was more at the receiving end of a decision made by others to organise her departure. Amina’s exit in such difficult circumstances thus highlights her vulnerability and agency.

The collection of narratives presented above aligns with research by other scholars which highlights that a decision to migrate might be either an individual or a family decision, and may be beyond the asylum seeker’s control (Koser & Pinkerton 2002; Lindley 2010). Lindley’s (2010)
study of Somalis arriving in the UK to seek asylum evidences the importance of social networks in providing information, resources, accommodation and support, and enabling family reunification, in turn influencing the decisions made by individual asylum seekers or their families and family friends on their behalf (2010: 119). This study has been unable to illuminate the sources of information women relied upon in making the decision to exit. However, other studies show that alongside increased mobility, globalisation has produced increased ‘personal contacts, complexity of familial and residential arrangements and forms of belonging to diverse sociocultural and political communities’ (Yuval-Davis, Anthias et al. 2005: 517). The present study found that there is no universal or homogenous set of reasons why people exit Somalia. Rather, numerous interdependent factors influence decision-making around exit. This is consistent with the research of other scholars who attribute women’s migration to a combination of factors – both economic and non-economic (Kofman et al. 2000). In particular, Kofman, Phizacklea et al. note the significant impact of physical violence or the threat of such violence on a woman’s decision to migrate, an observation supported by the transnational migrant subject participants and the law enforcement participant interviewed, who talked about the consequences for Somali women of giving birth outside marriage. Haban spoke in general terms about the ability to have ‘a better life’ outside Somalia, which may reflect both economic and non-economic factors. Economic factors were more commonly raised by women at the stage of arrival, when discussing the pressure they faced to send money to their families and relatives in Somalia once they had arrived in Malta – again, a matter taken up in Chapter 8.

The transnational migrant subjects interviewed in this research talked about their decisions to exit in ways that suggested that some women were more in control of this decision than others. A common theme for all participants, regardless of the degree of control they exerted on the decision to exit Somalia, violence and the threat or direct experience of sexual violence strongly influenced these decisions. Thus, this decision-making process needs to be understood in context. Decisions to leave are informed by a combination of multilevel and layered factors (Castles & Miller 2009; Faist 2000). This stands in stark contrast to how the irregular crossing of borders to seek asylum is perceived by the EU and its Member States: as a decision born of an individual, for which they must be held to account. This framework of ‘individual criminal responsibility’ does not adequately capture the complexity involved in women’s decision-making and the mixture of vulnerability and agency evinced by the transnational migrant subjects who exit Somalia.

THE INFLUENCE OF THE JOURNEY ON WOMEN’S DECISION-MAKING
One of the NGO representatives interviewed in Malta was adamant that transnational migrant subjects are unaware of how bad, violent and dangerous their journey to the EU is likely to be. If they were, he reasoned, they would not choose to make the trip:

You couldn’t dream up a worse scenario than this. (NGO 1)

The implication of this observation is that arrivals in Malta either have insufficient information about the nature of the journey and what awaited them, or have been misled. In the case of the women participants in this study, their sources of information about the journey and destination are unclear. Some were not active decision-makers in their travelling group and may not have been party to any discussions or information-sharing. It is unclear to what extent social and cultural mores around women’s status effectively excluded them from participating in decisions about their exit, journey and arrival. However, misinformation provided by those playing an active part in the smuggling market, in particular smugglers themselves, is likely to have had an influence. This is supported by a recent study of asylum seekers in the UK (Gilbert & Koser 2006). Gilbert and Koser found that people were misled about their destination by smugglers, and were often not active decision-makers in their exit. As has been described above, women’s decisions may also be mediated by significant male others, including family members and even smugglers.

The assumption that transnational migrant subjects do not know in advance the extent of the danger or risks they will face during their journeys to the EU was challenged by some of the women interviewed for this research. Some contended that the situation in Somalia was so bad that their hand was forced; knowing how dangerous the journey would be did not dissuade women from embarking upon it:

Yes, some know of the danger. But you do not know when you are going to die. We run away from our country. There is more trouble in our countries. Any day you could die in Somalia. (Hibo)

The women participants in this study experienced the situation in Somalia as not simply dangerous but as life-threatening; they lived with the constant threat of being killed. Therefore, the dangers represented by the journey out of Somalia had to be compared with the conditions in Somalia. The latter were such that exit was necessary at virtually any cost, and no matter how difficult the circumstances of the journey, this was not a factor that persuaded these women they should not exit Somalia.
Across the EU, including in Malta, deterrence is the guiding policy consideration for governments in designing refugee policy (Abela 2011). This is part of the ‘culture of control’ enacted by governments which targets asylum seekers and prioritises immigration crime (Bosworth & Guild 2008). The processes of the securitisation of migration have indeed been developed with this deterrent impact in mind. However, this study found that the deterrent message has not reached women refugees exiting Somalia.

Before coming to Europe we had never heard of Malta. (Aziza)

Additionally, it was clear from the discussions with women that ‘refugee protection’ did not figure prominently in their decisions to exit Somalia, nor in their strategies. The women spoke about safety and the hostile conditions in Somalia that gave rise to their need to exit. Refugee protection was seen as a way of classifying their access to rights and entitlements in Malta and within the EU or US Refugee Resettlement Programs, rather than as a norm of international law upon which the women could rely as they crossed international borders.

Many of the women interviewed for this research expected that Europe would be a place of safety and refuge, where they could expect to reunite with their families some time in the future. An NGO representative in Malta explained that Europe has a history of NGOs operating in Somalia, and in countries in which asylum seekers pass through, such as Sudan (NGO 1). He contended that this spread knowledge of the EU had contributed to people’s perceptions that Europe would be a safe place for them. The difference between their expectations and the reality, however, was stark:

We used to hear about Europe a lot but we never heard about the behaviour and rules of Europe. We thought Europe would give us safety and protection, a place to bring children to. We never thought life would be like this in Malta. (Ayanna)

Ayanna associated Europe with protection, rather than what she experienced in Malta. In contrast to this positive impression are the ‘behaviour and rules’ of Europe about which Ayanna said she was not aware before arriving in Malta. Ayanna’s comment indicates the level of anguish experienced over the conditions in Malta, to which I later return in Chapter 8.

One of the alarming impacts of securitisation of migration policy on women exiting Somalia is anxiety around whether or not they will be able to see their families again. Family reunification
policy has been made complicated by restrictive EU immigration measures. In the 1970s, family reunification was accommodated in Europe (Koser 2006). Now it is determined according to the kind of refugee protection received by the transnational migrant subject (McAdam 2005). While the women participants did not use words or phrases such as ‘refugee protection’, they did talk about their ability to later bring their families to wherever they arrived in Europe. Six participants said they had been unsure about the situation as regards family reunification when they planned their journey. Ladan, a 34-year-old woman with three children in Somalia, explained her expectations:

We know now that Malta doesn’t allow families to come with us. We didn’t know this before. This makes me sad and anxious. (Ladan)

For Ladan, this knowledge was a huge disappointment and a source of considerable anxiety. She would not be able to reunite with her three children and bring them from Somalia to Malta. She and her family faced continued separation and an uncertain future. Miriam, however, had believed that EU policies did allow them to bring their children to particular Member States:

We weren’t sure. We know that you can bring your family to Sweden. You can live with your children. (Miriam)

Despite being unclear on the rules, these women expected that Europe would not deny them reunification with their families. That Malta would eventually allow asylum seekers to bring their families to join them was a cause for hope among some of the women:

We are hoping they accept us and give us status so we can bring our families. (Sahra)

I hope I will get resettled to the US and be able to reunite with my family there. (Ladan)

However, the reality led to anxiety, disappointment and discontent. If they were not able to reunite with their family in Europe, the women were hoping for resettlement to the US, where they could apply to have their families join them. Women expected Europe to be a place of safety at the stage of exit.

VISA REQUIREMENTS AND CARRIER SANCTIONS – THE OPERATION OF FUNCTIONALLY MOBILE BORDERS

EU statements that recognise the challenging situation facing civilians in Somalia have not stopped the implementation of regimes of non-entrée aimed at preventing and deterring transnational migrant subjects from seeking asylum in the EU. The targeting of people who might be recognised as refugees is primarily achieved through the construction of functionally mobile
borders (Weber 2006) that operate to bring the single external EU border to the country of origin, in this case Somalia. The functionally mobile border under examination here uses compulsory visa requirements and carrier sanctions. These securitisation of migration policies, as discussed in the last chapter, have been pursued as a strategy to prevent asylum seekers from arriving in EU Member States (Guild 2005). This policy is illustrative of ‘risk-reduction’ methods that target those countries that generate asylum seekers and enforce a strict visa policy.

Carrier sanctions have been obligatory for all EU Member States since 2001. A law enforcement participant interviewed for this research said the introduction of carrier sanctions had had a significant impact on migration policing in Malta:

Prior to 2002 we used to receive Libyans, Moroccans, Tunisians and Egyptians. Now these are getting stopped at the airports in their countries because of carrier sanctions. It was also much easier to repatriate these people because we had mutual agreements with Libyan, Moroccan, Tunisian and Egyptian consular officials here in Malta. Now with the boat arrivals we have people here from over 38 nationalities. We don’t have consular relations with all these countries so we struggle to send them back. (LE 2)

Carrier sanctions involve private agencies in the policing of asylum seekers and effectively bring the border to the airport check-in counters in countries outside the EU. They have contributed to the growth in the phenomenon of people arriving in Malta by boat and seeking asylum, because gaining a visa to enter the EU has become so difficult, particularly for asylum seekers, as the experiences of the transnational migrant subject women in this research attest.

Notably absent from the discussions with the women who exited Somalia was the use of visas and passports – mechanisms that conform to legally accepted methods of migrating to the EU. In describing their lived accounts of exiting Somalia the women participants made no mention of visas, passports or aeroplanes – a silence that is revealing. As one NGO participant explained:

There are no opportunities for these people to apply for visas and come to Europe the legal way. How are they going to get here the legal way? The ‘legal’ way doesn’t exist. (NGO 2)

This contention finds support in reports by international NGOs and the US Department of State, which indicate that it is impossible to obtain a passport in Somalia as a result of the conflict and consequent bureaucratic dysfunction (AI 2010c; US 2009). HRW reported in 2008 that most EU Member States do not even have ambassadors to represent them in Somalia (HRW 2008).

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According to the Common Consular Instructions on Visas for the Diplomatic Missions and Consular Posts 2005, EU representation in Somalia is closed; it is not actually possible to apply for a visa to a Member State of the EU in Somalia. With visas and passports out of reach yet forming the touchstone of accepted legal pathways into the EU, Somali nationals are placed in a precarious legal position when it comes to crossing borders. Moreover, the strict requirements that make financial independence a criterion for obtaining a visa render direct access to the EU class-based. People, therefore, are forced to rely on refugee protection to gain entry to the EU, and to use forms of ‘illegal entry’. However, it was not clear from the interviews which methods the women judged to be illegal or legal. In talking to women about pathways out of Somalia, ‘illegal methods’ were found to be the norm. As will be explored in the next chapter, if transnational migrant subjects had greater access to financial resources they could make a quicker journey to the EU, yet it would follow the same path: overland to Libya and by boat to the southern EU Member States. It was apparent that this was the only option available to Somali women.Hyndman (1997) asserts that what is sought and partially achieved is containment.

In obfuscating direct passage, the combination of visa requirements and carrier sanctions contribute to the mustering of people into neighbouring countries and the increased use of smugglers or agents. Writing in 1997, Hyndman states:

The number of refugees and displaced persons who are allowed to leave countries in sub-Saharan Africa is dwarfed by the huge flow of humanitarian capital into the region in the form of peacekeeping and refugee relief. (1997: 155).

Hyndman thus hints at the contradiction between aid flows and the functionally mobile EU border. For the people of Somalia, a country in the Horn of Africa that is bounded by the Indian Ocean, the options to flee are limited. Mobility is restricted to neighbouring disadvantaged countries, such as Djibouti, Ethiopia or Kenya. Not surprisingly, since the introduction of carrier sanctions and compulsory visa requirements, there has been an increased demand for the services of people smugglers to circumvent the restrictions and travel further than neighbouring countries (Fekete 2003; Hailbronner 2007; Koser 2002; Nathwani 2000). The visa and carrier sanctions system is an illustration of functionally mobile borders that directly target asylum seekers and seal the borders to their legal border crossing. They are also a mechanism of the securitisation of migration policy that has resulted in people being unable to migrate directly and legally to the EU from Somalia, and hence necessitate more circuitous and evidently dangerous routes (Grant 2011; Weber & Pickering 2011). Despite their limited options, these women can be understood as making choices and initiating strategies for coping with the restrictive non-entrée regimes (Bloch, Sigona, & Zetter 2011).

CONCLUSION
The paradoxical approach of the EU to the conflict in Somalia can be captured in three points. First, Somalia is currently witnessing one of the worst humanitarian crises in the world, yet as further chapters will chart, Somali women’s experiences of seeking refugee protection in Europe are characterised by diluted legal protection, and social, economic, legal and administrative punishment. Second, the EU acknowledges how parlous the situation is by sending their EU-funded NGOs to Somalia to assist with water sanitation, the cessation of hostilities and developing the infrastructure needed to rebuild stability in the country, while simultaneously closing down legal pathways for direct access to the EU and detaining many of those who do reach the EU. Describing the third and final paradox, Menkhaus (2010) argues that, in supporting the TFG in Somalia, key donors and the UN are actually contributing to the maintenance of a regime that has brought terror to the lives of many civilians. Furthermore, treating the TFG as the only option available for re-establishing stability in the country has been criticised for contributing to more refugee flows rather than decreasing them, as is the desired policy of the EU.

Women’s decision-making around exit is complex and layered, influenced by a number of factors and actors. Children are an influential factor although in divergent ways. Some women opt to take children with them on their journey to seek protection; others take only one child, or travel pregnant, leaving their children with family in Somalia or neighbouring countries. Two ideal types emerged from the data: some women initiated their own exit, while others were on the receiving end of decisions made by family members or friends on their behalf. Family interests are met by the emotional benefits of reducing a daughter’s exposure to harm, and, as will be discussed further below, from the possibility of gaining material benefit through family reunification at a later stage – a role traditionally associated with the son within the migration literature. Family interest may also be met by restoring a family’s sense of honour at the expense of a daughter being compelled to exit Somalia because she falls pregnant. This thesis affirms the work of Richmond (1994) and Van Hear (1998, 2002), which has found that a whole variety of factors – economic, social, environmental, and political – contribute to the decision to exit Somalia (1994: 62–66), and recognises the interplay between such factors (Kane 1995 5–6). Specifically, this study has expanded on some of these factors in relation women.

This chapter has also cast light on women’s expectations of the journey to and knowledge of Europe prior to exiting Somalia. It is still unclear what sources of information are available to Somali women about both the journey and the destination. This research has observed, however, that women are aware of the potential for danger en route to Europe. Notwithstanding this, the decision is made to flee as a result of the unsafe conditions in Somalia. The women interviewed for this research understood Europe to be a place of safety and refuge. Importantly, they expected that it would be a place to which, in the future, they might be able to bring their
children. Chapter 7 will explore women’s experiences of transit and the impact of the securitisation of migration at this key stage of the migratory journey.
CHAPTER 7: FROM SOMALIA TO MALTA – VIOLENCE AND SURVIVAL IN TRANSIT

In 2004, it was estimated that almost a quarter of all Somalis lived outside their country of origin (Al-Sharmani 2004). None of those interviewed in this study transited through the many refugee camps in neighbouring Ethiopia and Kenya. Instead, all took the journey from Somalia to Malta transiting via Ethiopia, Sudan, Libya and then across the Mediterranean.

The past decade has seen EU migration policy implementation increasingly centred on South–North migratory routes with the aim of preventing and deterring irregular migration. While southern Europe was previously thought of as the ‘soft underbelly’ of the EU (Hollifield 1994), the focus has now shifted to parts of Africa like Libya and Morocco (Collyer 2006; de Haas 2007; Düvell 2010). Considerable funds have been dispensed to support these initiatives, which have included bilateral agreements on irregular migration management, and practices such as interdiction. Coinciding with the shift, the trend in refugee protection has also become heavily trained on regions of origin and on preventing what is known as ‘transit’ migration or ‘secondary migration’ – people travelling further afield from their country and region of origin. In light of these changes, this chapter asks: what is the gendered impact of securitisation of migration processes that cluster people in their region of origin and foster mechanisms to prevent people from migrating further than their region of origin for the purposes of seeking refugee protection? Transit is, therefore, a critical stage for examination.

‘Transit’ is a politically charged term (Oelgemöller, 2010). In this thesis, ‘transit’ is taken to mean the journey from the point of exit, Somalia, to the point of arrival in the EU, Malta. This geographical limitation is adopted because refugee women spoke about transit as having a separate, albeit intersecting, relationship to the rest of their journey. As Düvell (2010) acknowledges, ‘transit’ is difficult to define. It may capture many stages, including transiting Malta en route to other countries in the EU or further afield such as the US. Recent research suggests that people continue transiting until their protection needs are met (Oelgemöller 2010; Düvell 2010). Some scholars argue that all migration should be termed transitory. In considering ‘transit migration’, Düvell (2010) argues that all migration should be considered ‘on-migration’ and that transit migration should be seen as a subcategory of this. He contends that many people enter a country with the intention of staying a short time and then leaving, while some stay for longer periods and decide to move because of a lack of opportunities or through frustration. Others intend only to transit but then become stuck in a country because of the constraints imposed by border controls. Some transnational migrant subjects even intend to transit but stay to become de facto immigrants. Düvell’s (2010) research has drawn attention to the complexity and variety of the types of migration.
In adopting this definition of ‘transit’ there are two important points to address. First, it is acknowledged that migration is nonlinear, and therefore that clean divisions between each stage – exit, transit, arrival and onward migration – are not assumed. Second, it is acknowledged that the definition used here is state-centric, or based on the primacy of state sovereignty; however, in contrast to state approaches, value judgments that ‘transit’ migration is ‘wrong’, ‘illegal’ or ‘irregular’ find no place in this analysis. As a concept, ‘transit countries’ has risen to prominence within discourses of ‘migration management’ (Oelgemöller 2010). Oelgemöller has traced this emergence among inter-governmental working groups since the 1980s. The term ‘transit country’, she argues, has a political function immersed in an ‘us and them’ binary, which is ‘conceptually undecided about whether to formulate itself as a security/threat or a development/humanitarian discourse, or both’ (Oelgemöller 2010: 408). This has contributed to the development of language around ‘secondary movement’ and ‘onward migration’ that delegitimises this migration as somehow ‘irregular’; only the migration from country of origin to the first ‘transit county’ is presumed to be regular and somehow legitimate.

The transnational migrant subjects interviewed spoke about transit in two main ways. First, they talked of the variability of transit: exposure to violence, conditions of accommodation, incarceration, how long the journey took and how safe it was were all dependent on numerous factors – primarily, access to financial resources, but also, gender. Second, the women spoke about the danger and violence they experienced at particular transitory junctures throughout the journey. This was most commonly discussed by the transnational migrant subjects as occurring at the desert crossing of the Sahara in Libya, and on the boat journey to Malta. This chapter characterises women’s experiences of transit in terms of both direct and structural violence (Galtung 1990; Galtung 2010). Direct violence shapes women’s experiences of transit. Women are exposed to sexual violence, incarceration and even death. That selected racialised and gendered groups of transnational migrants are drawn into making these long, dangerous and expensive journeys to the EU is illustrative of structural violence. Taken collectively, the factors that lead to the continued insecurity of transit are evident in the narratives of women who have taken the journey from Somalia. None applied for asylum and none found socio-legal protections en route. This chapter will examine experiences of direct and structural violence in transit, and explore some of the contexts in which this violence took place for the participants in this study.

WHOSE SECURITY? WOMEN’S EXPERIENCES OF CONTINUED INSECURITY EN ROUTE TO MALTA

We went from Somalia to Ethiopia, Sudan, through the Sahara, and then to Libya. (Pia)

I went from Somalia to Ethiopia, to Sudan, Libya then to Malta. Now I will go to the USA. (Aziza)
All of the women participants had transited through the same countries. Each of these transit countries discussed by the women participants has experienced sustained conflict, famine, instability and political unease, in some cases spanning decades (de Waal 1997; ICG 2008). The conditions in these countries shaped the journey to Malta for the women participants. None of the women interviewed spoke of obtaining refugee protection in any of the transit countries, even though all but Libya are a signatory to the 1951 Refugee Convention (UNHCR 2011e). Indeed, the only legal intervention women cited throughout their journey was their experience of detention in Libya.

When this research was conducted, and when the transnational migrant subject interviewed transited North Africa, the wave of demonstrations known as the Arab Spring that took place in early 2011 had not yet occurred (ABC 2011). Women participants transited through Libya before the conflict broke out there and the National Transitional Council came to power in late 2011 (BBC 2011a). It is worth noting, however, that as the humanitarian disaster unfolded, Malta assumed a prominent role as the place of refuge for evacuees from select countries such as the US, UK, Canada and Brazil (Guardian 2011). Yet while the foreign nationals of these countries were shipped or flown out of Libya, many transnational migrant subjects remained stranded, and many were asylum seekers. Reports suggest that some transnational migrant subjects were being confused with outside mercenaries flown in by Colonel Muammar Gaddafi, and were being beaten, stabbed or killed (TOM 2011a). Many people fled to the border of Egypt and Tunisia. The experiences of transit collected here will not take into account this 2011 conflict, but will reflect other conflicts impacting the region.

None of the participants said that they stayed in or transited through a ‘refugee camp’. In the conversations with the women I learnt not to press this point as it was seemingly of little relevance – I asked four women how the existence of refugee camps had affected their decision-making and they just replied ‘no’. Perhaps my own thinking was influenced by the common view, criticised by Oelgemöllor (2010), that migrants are in need of the humanitarian assistance provided through refugee camp structures. As Harrell-Bond (2002) asserts, the camp experience is not universal; only a small number of all refugees go to refugee camps (Harrell-Bond 2002: 7).

Moreover, there is considerable secondary research to suggest that life in refugee camps in the regions neighbouring Somalia is plagued by insecurity and violence, making it an unappealing option for refugees. Somalia is home to many refugees and the prolonged conflict there produces many refugees. There are IDP camps within major cities and many refugee camps in the countries neighbouring Somalia (UNHCR 2011). The location of the world’s largest refugee camp is adjacent to Somalia in Dadaab, Kenya. This camp was home to around 380,000 people as at July 2011 (UNHCR 2011), yet has a maximum capacity of around 90,000. Oxfam has previously described the Dadaab camp in 2009 as ‘barely fit for humans’ (BBC 2009). In 2007,
the Kenyan Government closed the border with Somalia in an attempt to prevent people from continuing to stream into Kenya (Oxfam 2009). The latest outbreak of famine in 2011 in the region has further caused numbers to spiral (BBC 2011; Allie 2011). Despite this, the Kenyan Government has refused to build another camp, citing concerns over national security and conflict with the host population (UNHCR 2011).

There are also refugee camps in Ethiopia, a country transited by the participants in this study. The UNHCR has a presence in four camps in the east of Ethiopia for some 130,000 Somalis (MSF 2011b). Reportedly, supplying people with sufficient drinking water is a daily challenge in these camps (Egziabher 2010). In November 2011, up to 300 people were crossing into Ethiopia from Somalia every day (MSF 2011b). Compromised standards of living, exposure to violence and conflict with the local population are defining factors of the refugee camp experience (Harrell-Bond in Indra 1999). The UNHCR Standing Committee states that ‘violence, exploitation and other criminal activities’, including gender-based violence, are ‘disturbing manifestations’ of the idleness and passivity faced by those in receipt of humanitarian assistance for protracted periods and facing an unclear future (Smith 2004: 39). Domestic violence, for example, is much worse in the refugee camps in Kakuma, Kenya, than it is in the southern part of Sudan from where most of the refugees have fled (Smith 2004: 39). The difficulties arising for those who live in refugee camps were recognised by the EU in its Joint Strategy Paper for Somalia 2008–2013:

Most Somali refugees are in a state of limbo, unable to locally integrate or return to their place of origin. Regionally, strict encampment policies have been introduced to restrict refugee mobility, preventing Somalis from accessing the informal labour market. Living conditions inside the camps are inhospitable and inappropriate for long-term resettlements, and camps are frequently located in remote, semi-desert areas. Urban refugees are exposed to harassment, detention and discrimination, usually without recourse. There is limited documentation and statistics on urban refugees. (EC 2011b: 5)

This summary paints a chaotic and desolate picture of life in refugee camps for Somalis. The gendered nature of refugee populations (Bhabha 2004), more women in camps than men, means that more women than men are exposed to these compromised conditions and standards of living in the refugee camps neighbouring Somalia. These camps, in which none of the women participants in this research spent any time prior to coming to Malta, present a picture of continued insecurity.

There were differing views among the NGO and law enforcement participants as to why people might not journey to a refugee camp before arriving in Malta. NGO participants felt that money was the major determinant; if you have money you are unlikely to go to a refugee camp. Access to financial resources is thus central in determining one’s ability to travel beyond a refugee camp.
NGO participants also felt that family is an influential factor in that it is more likely that a family can remain together if they all go to a refugee camp; in contrast, the journey to Europe was seen as characterised by family separation and fragmentation. Finally, proximity was also perceived to be important. Those who lived closer to the Kenyan border might flee to a refugee camp in Kenya, while others would be more likely to make the journey west and out of the country. Members of law enforcement agencies felt that it was a matter of connections with others both en route and in Europe. Those who had strong networks in Europe or Libya would be more likely to make the journey to Europe, which echoes similar findings by Massey (1994) and Koser (2010).

As Chapter 3 discussed, travel to Member States of the EU via the Central Mediterranean is a relatively recent trend and has fluctuated greatly as securitisation controls have assembled along the southern EU border. The key transnational migrant subject routes from Africa to Europe are highlighted in the map in Figure 10 below. This map reflects the situation prior to the commencement of Frontex operations in the Central Mediterranean in 2006, aimed at addressing the increase in the numbers of people arriving via this part of the southern EU border (Frontex 2011c). Malta participated in the operations for four consecutive years from 2006, ceasing participation in 2010 for reasons that will be examined later in this chapter.
The denouncing of Colonel Gaddafi’s regime in the current moment stands in stark contrast with recent EU engagement with Libya, as Chapter 3 has previously highlighted. South-North migratory routes are attracting increasing attention from EU institutions and Member States (Collyer 2006; de Haas 2007; Düvell 2010). Chief among these was the bilateral agreement between Italy and Libya. Illustrating broader cooperation is the Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum, which the EU established in 2006. This program, funded by €384 million in the period 2007–13, is focused on building capacities in regions experiencing conflict, thereby impacting on the migratory route from South to North (EC 2011b). In the Strategy Paper outlining the initiatives for 2007–10, ‘building capacities’ is a term applied to a diverse range of tasks, some of which reflect securitisation measures such as border control and negotiating readmission agreements, while others fall more into the category of ‘migration management’, and include building understanding of migration in and through Africa and improving channels for the flow of remittances from migrants (EC 2011b: 17-8). Aspects of these agreements have made it more difficult for the women participants to find security in transit, as this chapter will explore.

‘IT DEPENDS’ – KEY VARIABLES INFLUENCING WOMEN’S EXPERIENCES OF TRANSIT TO MALTA

All of the women participants talked about the dangers inherent to the journey from Somalia to Malta. Blota was 22 years old and had been in Malta for 18 months. She described what it was like for women transnational migrant subjects:

*How long did it take to get to Malta?*

It depends; sometimes it takes two weeks, sometimes two months, and sometimes three years. (Blota)

The variability described here is pronounced – from two weeks to three years. NGO participants also noted that some transnational migrant subjects are able to make the journey to Malta quickly and in ‘relative comfort’, while others have a more difficult time (NGO 1 & NGO 2). The kinds of factors that account for the differences among women’s experiences of transit were made alarmingly clear by Blota:

*What does this [how long it takes to reach Malta from Somalia] depend on?*

Some stay in prison, some even die in the Sahara. Some are shot. Some people die trying to escape. Sometimes in Malta people are in detention for two years, some for one year, and others for one month, it depends. (Blota)
The kaleidoscope of violence which some transnational migrant subjects experience or are exposed to in transit shapes the journey and produces highly variable experiences of transit from Somalia to Malta. The above comment reveals how women may be subject to imprisonment for short or long periods. Transnational migrant subjects are exposed to what appears to be various degrees of opportunistic and organised violence, like being detained in prison or shot, and are susceptible to hazardous conditions of transit, sometimes dying in the Sahara Desert. The forms of harm can be located on a spectrum which at the one end results in death. This point was also made by Miriam, who talked about transit in extremely vivid terms:

On the journey here there are a lot of people suffering and people dying. People are running away to safety. The journey is very dangerous. You have a 50/50 chance of losing your life. (Miriam)

Exact figures on the number of transnational migrant subjects who perish trying to make the journey to Europe do not exist as these deaths are largely unaccounted for by governments and the media (Weber 2010; Weber and Pickering 2011). Chains of accountability for these deaths can be difficult to detect, and therefore prosecutions difficult to secure. This violence makes the journey unpredictable and variable. Miriam captures the hardship experienced by some transnational migrant subjects in transit. While she survived the journey to Malta, what can be inferred from her comments is that she witnessed people suffering and being killed. What Miriam did not discuss, but which other women did, was the prevalence of sexual violence and the currency of women’s bodies in crossing borders.

Exposure to both direct and structural violence was a key theme in the women’s experiences of transit. Direct violence is personal violence or the somatic realisation of violence and can include physical and psychological violence (Galtung 1969). Structural violence is that which is built into a structure: violence resulting from systemic and structural inequalities that affect people’s daily lives, such as racism and poverty (Anglin 1998). Galtung first distinguished between personal and structural violence in 1969, and in 1990 came to add ‘cultural violence’ to his typology of violence (Galtung 1990). Cultural violence constitutes a legitimising force for direct and structural violence, such as the glorification of violence in the media. Criminologists have used notions of structural violence to account for the deaths at the border of significant numbers of undocumented migrants (Weber 2010; Weber and Pickering 2011). This chapter adopts Galtung’s conceptualisations of direct and structural violence to characterise women’s experiences of transit. The analysis of cultural violence is not suited to the methodology pursued here so is understood to be beyond the scope of this inquiry, but is noted as a valuable subject for future research. This chapter unpacks what the refugee women participants said about the violence they experienced in transit. These experiences of violence will be addressed.
sequentially in the context of three specific sites most commonly references by women participants: transit through the desert, through Libya and by sea to Malta.

SITE ONE: EXPOSURE TO VIOLENCE CROSSING THE SAHARA DESERT – SEXUAL VIOLENCE, EXTORTION AND ABDUCTION

According to Ramsbotham, Woodhouse and Miall (2007), the breakdown of authority structures, and consequent corruption, are some of the impacts of prolonged conflict. This was evident in the women’s experiences of sexual violence, extortion, and opportunist and systemic violence and corruption in relation to transit. The women primarily spoke about crossing the Sahara. The border crossing between Ethiopia and Somalia was not mentioned by any of the women interviewed. It is understood that this border crossing between Somalia and Ethiopia was completed fairly quickly and without difficulty.

Women in this study described their experiences of direct violence in the context of the desert crossing between Somalia and Libya. The Sahara Desert is the largest desert in the world and stretches across the whole of North Africa (Pickford, Wanas, & Soliman 2006). The women participants made numerous references to the desert and how dangerous it was to cross. This was also raised by some of the NGO participants who have been involved in working closely with women in a medical or legal capacity (NGO 1 & NGO 2). In the excerpt below, Sena describes the Sahara crossing:

On the journey from Somalia, it’s very difficult for women. They have to get across the desert and there are men there, like soldiers but not. They have cars for the women and the men to get into to go across the desert but they will stop the car and rape the women over the course of the journey, which lasts about seven days. Then new groups of women arrive and they are replaced. If men object then they will be killed. If they pay then they can protect their wives. In this way it is more difficult for women because they take them. It’s not the same for men. (Sena)

Sena’s experience of the desert crossing demonstrates the gendered nature of violence in transit. For some women, sexual violence is a feature of travel through the Sahara. Partners of women are threatened with harm if they object. Sena’s experience indicates the kinds of power relationships that dominate during this part of the journey: the men perpetrating the violence who facilitate transport and navigation, and the price of passage being rape. Single women and women with partners are both subject to sexual violence. Women and men face different kinds of violence. If men protest to the violence being carried out on women, they will be killed.

Sena’s account provides an impression of the perpetrators of the violence. They seem unaccountable to any authority for their actions. Sena claims that they look like official soldiers,
but are not. We might presume from this comment that they are not government soldiers, but perhaps private militia who operate with impunity. In Sena’s narrative, the level of organisation around the border crossing appears high. She infers that there is a degree of regularity to this kind of violence exercised throughout the Sahara Desert crossing – for example, the car will be sent back and another group taken. What Sena’s experience also reveals is that exposure to violence can be mediated by money.

Extortion was identified as a feature of border crossing through the desert. Thus, the desert crossing is made possible by meeting the demands placed on women by those who would otherwise stop their passage. It was understood by one NGO participant that women could provide sexual services or cash to secure a successful border crossing:

In the desert they are stopped and they have to wire money through and that is how they guarantee passage. Those without money will provide sexual services. They give cash or sexual favours. (NGO 1)

The desert crossing is depicted as one in which people are detained and prevented from continuing the journey unless they meet what seem to be specific and organised demands for money or sexual services. From a structural perspective, if women lack adequate access to finances, their bodies become a currency. One can also assume the existence of an industry to support the wiring of money in order to mitigate danger. This points to the significant industry built to further the mobility needs of those with illegal migration status, as others have noted (Michalowski 2007; Salt and Stein 1997). The quote above paints a different image to that presented in Sena’s narrative: her experience refers to rape, whereas the NGO participant talks about ‘sexual favours’, distinguishing such favours from rape. However, both highlight the gendered nature of violence and extortion that occurs during the crossing of the desert, and the power of the self-appointed border agents who control the opening and closing of this border to those crossing the Sahara to seek refugee protection.

SITE TWO: ‘LIFE IN THE SHADOWS’ – DETENTION AND SUBSISTENCE IN LIBYA

The participants spoke about living ‘life in the shadows’ during transit – whereby they sought not to draw attention to themselves for fear of being arrested and/or detained. The conditions in Libya were described by some women in terms that emphasised both their vulnerability and their agency in seeking to avoid detention:

Life is really in the shadows in Libya because they will put you in detention. So you have to really hide. (Pia)
For Pia, the threat of detention was so immense that it impacted on her choices in negotiating daily life. This phenomenon of transnational migrant subjects avoiding detection by authorities by minimising their use of public space has been highlighted in research by McDowell and Wonders (2009) in the context of the US–Mexico border. Similarly, while in Libya the participants made strategic decisions about how they would negotiate public life. In a JRS study (2009), one refugee woman described spending three months in Tripoli and not going out once for fear of being asked for money (JRS 2009: 14). Transnational migrant subjects understood that they were marketable goods – ‘when you get to Libya, people treat you like livestock. They exchange you for money’ (Asad in JRS 2009: 14). Transnational migrant subjects sough to live in the shadows in Libya to avoid detection and extortion as a result of their illegal migration status.

While not a signatory to the 1951 Refugee Convention, Libya is a signatory to the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. Libya does not have a formal legal refugee determination system, but the UNHCR is responsible for carrying out refugee determination procedures in the absence of any other such system in the country. One NGO participant noted that this refugee resettlement process from Libya has been noted as taking a long time (NGO 2). In any case, Libya has not always recognised UNHCR-issued refugee certificates, resulting in its deportation of genuine refugees: between 2003 and 2006, Libya is said to have deported 200,000 people to their countries of origin, including asylum seekers and recognised refugees (JRS 2009). None of the refugee women in this research mentioned the UNHCR office in Tripoli or having obtained assistance with their refugee claims. Rather, participants’ accounts of their experiences in Libya reflect direct and structural violence and the functionally mobile external EU border.

Women’s experiences of accommodation in Libya revealed elements of direct and structural violence. One participant described the accommodation in Libya as a form of containment imposed by those standing over her. She was forced to reside in a particular residence, her movement to and from controlled by guards. Women had to negotiate being allowed to leave their living quarters:

The living situation is difficult because you are not free. There are people standing over you and you have to negotiate to leave. Some people pay money to leave, others provide sex or are raped. (Aziza)

This description evidences the precarious existence of transnational migrant subjects: unable to live freely and actively policed by agents whose identity is apparently unclear. HRW (2009) has found that some transnational migrants residing in Libya sleep in their shoes and clothes to be able to make a quick exit if required – imagery which reinforces the risky and hazardous nature
of daily life resulting from their illegal status. Dina, a 47-year-old woman, explained that accommodation options for women in transit are varied:

Some people are in trouble, some people are OK, and others live without accommodation. (Dina)

For some, accommodation can be sourced easily, while others experience difficulties in securing accommodation, described here as either ‘in trouble’ or without accommodation. Thus, it appears that some people are placed in compromised situations when seeking to obtain shelter, and others have to live without any shelter at all during transit. Those who are forced to live without accommodation and those who are ‘in trouble’ are exposed to greater risk and harm. Such living conditions reinforce the insecurity facing transnational migrant subjects in Libya.

The cycle of violence against asylum seekers in public life in Libya – arrest, detention, paying for freedom and arrest once more – was understood to be the manifestation of a considerably organised and lucrative industry, according to one NGO participant. Experiences of transit in Libya were influenced by money, gender and sometimes luck, as is captured by this narrative:

It’s a matter of money to pay the smuggler. It’s a matter of luck in Libya. In Libya there is this system where basically they enter Libya in three pick-ups [in which] there are about 45 people. Of this number, three are caught by Libyan police and put in jail. They have to pay to get out. Detention staff sometimes sell them to the smugglers and the migrants have to pay them again to continue their journey. And they start again. Sometimes they are caught again many times before they arrive. They are sold often more than once. Because basically the smugglers buy them because they want to ask much more money from them so that’s what will happen. Usually men and women are mixed together so they share the same situation. It’s just more a matter of abuse. There is more sexual abuse against women. (NGO 1)

This quote demonstrates how migrants become a commodity to be bought and sold in Libya by people smugglers and detention staff, who make money from negotiating the release of transnational migrant subjects. Sometimes the cycle repeats many times. This situation reveals the prominence and influence of people smugglers and how closely they interact with the authorities. These border guards and smugglers have the power to charge and extort large sums of money to arrange passage to Malta, or even to arrange for migrants not to be arrested. This NGO participant also discussed the gendered nature of violence and pointed out that women experience more violence than their male counterparts. Men and women travel using the same methods and both are subject to cycles of violence around detention and release, yet women are at higher risk of sexual abuse.
Detention in Libya

While many participants described their fear of detection and detention and how it would influence their decisions to avoid public spaces, only two women spoke about their direct experience of detention in Libya. In both cases, the women were arrested while in the process of boarding a boat that was heading for the southern Member States of the EU:

I was in Libya for one year and two months. I was arrested one time and spent one month in detention. I was arrested trying to get onto a big boat to go to Europe. There were 160 on board and 30 were arrested. I was arrested because I was in the car waiting to get on the boat. The boat eventually left and made it to Italy and the people made it to Italy. (Sena)

I was held in detention for nine months after being arrested. I was about to catch a big boat. I think because it was a big boat the police heard us. Detention in Malta is not as bad as Libya, you don’t get beaten in Malta. (Syrad)

Detention served to implicitly punish those seeking to get to the EU by boat. The role of individual EU Member States in collaborating on the construction and use of detention centres illustrates the functional mobility of the EU external border. The detention centres in Libya are partially funded by the Italian Government (Brothers 2007). The amount of time spent in detention varied for each participant. Syrad described conditions in Malta as comparatively better than those in Libya, specifically because there was no physical abuse in the former. However, she did not elaborate on what she had experienced in Libya and I did not press the point. Neither of the women participants detained in Libya talked about rape in the detention centres, nor was it anticipated that they would reveal this information in discussions. On this point, however, NGO participants who had worked in a medical capacity with migrant women in Malta said they had heard reports of rape in detention centres:

Detention centres in Libya warehouse people who are illegal. The people are exploited and treated poorly and there is rape and protection sex and imprisonment. (NGO 1)

This again illustrates the double bind faced by women in transit. As part of recent research on migrants in Italy, Hamood (2006) interviewed 65 refugees and asylum seekers who had transited Libya. Hamood’s study, addressed the gendered nature of violence in Libya’s detention centres, observing that female participants had been threatened with rape and both male and female detainees subject to beatings. Syrad’s narrative in this research suggests she was physically abused in a Libyan detention centre. Research by Amnesty International (2010) similarly found evidence of violence against women in detention. Amnesty International interviewed a female migrant who said she had a miscarriage in a detention centre in Malta after guards had beaten
and kicked her and pushed her to the floor; it was then one week before she was taken to hospital (AI 2010: 6-7).

Conditions in the Libyan detention centres have been criticised by various human rights groups (AI 2010a, b, d; HRW 2009c; JRS 2009; MSF 2009b), which have characterised them as overcrowded, unhygienic and violent (AI 2010: 5). No healthcare is provided and there is minimal access to food and water (JRS 2009). Ailments such as scabies, dermatitis and respiratory problems are endemic (JRS 2009). There is also religious persecution, with Christians reporting abuse for carrying or wearing a cross (JRS 2009). The law enforcement participants in this study described the conditions thus:

In the detention centres they are beaten, given no food, it can be extreme temperatures being cold or hot. (LE 1)

Both NGO and law enforcement participants affirmed that transnational migrant subjects could pay their way out of detention in Libya. Levels of poverty coupled with the low wages in Libya made this an attractive option for detention centre staff (NGO 1).

They can pay the guard to get out, some 2000 Dinas. They can pay the detention people to let them out and they are then put in the hands of the smuggler and they have to send 1000 Euros. Some people try and leave three times. Many have families back in Somalia that wire them the money. (LE 2)

Corruption causes structural violence insofar as guards become susceptible to accepting bribes to supplement their poor pay and conditions, fuelling the cycle in which transnational migrant subjects travelling through Libya can negotiate with Libyan officials to pay their way out of detention (JRS 2009). Research carried out by the JRS on conditions faced in Libya by migrants details how, if the price is right, those arrested can leave detention. Border policies thus create the conditions that encourage guards to accept money to release transnational migrant subjects, but also to use migrants as a commodity, sometimes releasing them and arresting them again on the same day to yield more money (JRS 2009: 11). Law enforcement officials in Libya appear to be closely involved in facilitating detention and release, and eventually onward travel to Malta.

Subsistence in Libya

Contrary to how they are often labelled, not all migrants in Libya are ‘would-be’ asylum seekers (Düvell 2006; Oelgemöller 2010). Libya has a long history of being a destination country for workers, but also as a transit country (See Düvell 2010). For some time there has also been a tendency to confuse figures related to Libya’s migrant population (Düvell 2010). Formerly, many people would come to work in Libya who had no intention of migrating onward to Europe.
However, it has become more of a transit country in recent years as migration routes have shifted along Europe’s southern border (Lutterbeck 2009). The impression that does emerge is that transnational migrant subjects may be in Libya for weeks, months or even years. Some move through quickly whereas others stop to work to fund the rest of their journey. Libya was seen by some of the women participants as a place where women could potentially work in order to save enough money to buy a ticket on a boat to Europe:

I worked in Libya for four months as a housekeeper. I made good money there and was able to pay to come to Europe with my husband. (Ayan)

Others had a different appraisal of the work situation in Libya. One participant said she felt that work opportunities in Libya were non-existent for asylum seekers. It was almost as if employment was the furthest thing from her mind, so intent was she on simply staying alive:

I was not working in Libya, there is no work. There are a lot of people suffering and people dying. (Nina)

This study revealed that work opportunities in Libya for transnational migrant subjects were gendered. Women mainly worked as cleaners in domestic settings. The participants expressed the view that women were better able to secure employment in Libya than men and to be remunerated for their labour. The women’s experiences demonstrated their agency in securing employment and funding their onward migration. As two participants described, men were not always paid for their work, while women had a better chance of being remunerated for work by their employers:

It was easy to get work in Libya cleaning. It’s difficult for the men. They do construction work but sometimes they don’t get paid for their work. With women you always get paid. (Blota)

It is easier for women to get a job and work in Libya as a cook or a cleaner. For men it’s more difficult. (Nelo)

The imperative of gaining access to financial resources to secure successful border crossing in transit was also found to have gendered consequences related to work. One NGO participant said that some women pay for their journey across borders through the financial gains from sex work. The circumstances of transit were understood to draw women into the informal economy of sex work. Some women were seen as actively choosing this work, while others were understood as being coerced by the circumstances:

When they have not reached Malta yet, they are still in Africa, some are forced into prostitution, some end up in prostitution. I think it still comes down to forced prostitution
but rather than physical force it’s circumstantial; they end up in that predicament. (NGO 2)

Some are also coerced into sex work by male partners who journey with the women from their country of origin:

I came across women that left their country of origin with what they thought was their boyfriend, but once they got into Libya, were then forced into prostitution by this person. They effectively escaped this prostitution by getting to Malta. (NGO 2)

This statement suggests that there are a limited number of options for work available to women, which results in them being drawn into the informal economy of sex work, sometimes by their partners, in order to fund their migration to Europe. For women who are unable to pay to cross borders, sex work can provide the money required to continue their journey. For those who are coerced into sex work, their journey may also be a way of escaping abuse in the sex industry in Libya.

A further consequence of the pervasiveness of violence against women is that women may be stigmatised as sex workers for travelling to Europe and perhaps for being a single mother. One NGO participant discussed how women battled the stigma of being ‘sex trafficked’:

They are not traffickers because they want to go but sometimes they are forced. Sometimes they are abused by the smugglers. In Libya, in prisons women are often abused by Libyan soldiers. It’s more difficult for them. It’s sometimes the reputation they get. Their community, a single woman travelling and making her way to Europe, it’s a stigma, people think they are working for sex. (NGO 1)

For women, crossing borders entails negotiating gender-based violence by guards and those that may be organising or assisting their migration, and some have mobility and sex work forced upon them. Participants spoke of gender-based violence and how women’s bodies were used as a currency in Libya. This extends research by Khosravi (2010: 99), who describes gendered border embodiment using his own and other experiences of male informants in his ethnographic research on ‘illegal travellers’. He analyses border control as making borders of people through bodily sanctions such as deportation and detention. Gendered border embodiment has transpired in the experiences of women participants in this research also through detention in Libya but in addition through other sites such as the border crossing through the Sahara Desert, accessing accommodation in Libya, and in subsisting or gaining the financial means to afford to travel to the EU. Experiences of transit had numerous consequences for women’s onward migratory journey.
SITE THREE: THE BOAT JOURNEY TO MALTA

All of the women participants in this research had survived the journey by sea from Libya to Malta. This section explores women’s experiences of the journey, interdiction and ambivalent search and rescue. The boats on which the women arrived in Malta were of different sizes and had varying numbers of people on board, as highlighted below in Figure 11. A gender breakdown of these statistics is not available however the women participants suggested that there was a mixed number of men, women and children on board these boats, but overall a high percentage of men. Syrad, for example, left Somalia in 2005 and travelled to Libya; she then arrived in Malta in 2006. She was on a boat with 25 people including six women. Sena described her journey as follows:

There were lots of people on my boat to Malta. I paid 1000 US, other people paid 800 or 900. I couldn’t sleep on the boat. We were on the boat for three days and two nights. When we were rescued it was fantastic! We all thought we were going to die. I have lost many friends at sea. Twice my boat was turned back before I successfully arrived in Malta. We all didn’t know where we were going on the boat. We had a driver who was very smart. He stopped the boat so we could wait out a storm. When it was clear we kept going. There is no choice when you are to get on the boat; you have to go when they tell you. (Sena)

Travelling to Malta by sea from Northern Africa is estimated to take between two and five days (Ostergaard 2008), and is a hazardous journey. The law enforcement representatives confirmed that most of the boats arrived between April/May and September/October each year, as this was the period during which the seas were calmest. Despite this, the journey was described in terms that evoked a sense of danger and fear:

My boat had about 80 people and 12 women. The boat took four days. I was crying, just the whole time by myself. It was bad. (Blota)

Alternatively, some participants said they had access to life jackets and that the journey to Malta was relatively quick:

We came on a boat in 2008 to Malta. There were 40 to 50 people on board. There were six children and four women. There were 40 men. It was safe and we had life jackets. We were on the boat for two days. I came with my husband and eight-year-old child. (Dekha)

For Dekha, the conditions on her boat were good enough to be described as ‘safe’. However, even with safety supports such as life jackets the journey could still be overcrowded and harrowing, as Ayan describes:
To buy the ticket to Malta it cost 1400 US each. We pay 2800 for a couple. I came on the boat pregnant. I came with 80 people. We had those reflector jackets. You are just sitting with your elbows pressed against other people. There is water lapping up at you. (Ayan)

It can take many attempts to successfully reach Malta or another European port. The boat journey from Libya to Malta covers a great expanse of sea that is difficult to navigate. Boats are poorly equipped with minimal supplies and rudimentary navigation gear, according to the law enforcement participants interviewed in this study. Many transnational migrant subjects described the journey as distressing: elbow-to-elbow with others, water lapping at their sides, and with limited supplies. Blota said that she was ‘crying the whole time’. Another participant completed the journey while she was six months pregnant and described it as extremely uncomfortable (Kief). Dehydration is a particular danger for pregnant women, as other researchers have found in the context of crossings of the US–Mexico border (Falcon 2001). This was also confirmed by a law enforcement officer interviewed for this research:

The most terrible memory I have is of two women arriving dead on the boat and both were pregnant. The autopsies said they dehydrated. (LE 1)

One NGO participant felt that women are at the bottom of the social hierarchy on these journeys:

What we know of when they arrive, we’ve been present in Lampedusa for three years, together with UNHCR, is that apart from the trip on the land, and even the part on boat usually the women are given the worst place on the boat. If they die, it’s not a big loss so they are close to the engine and they get burned. And they are like this on the edge of the boat as well. (NGO 1)

The boat trip to Malta is invariably overcrowded, offering limited access to safety supports, exposing transnational migrant subjects to gendered harms.

The number of transnational migrant subjects arriving in Malta plus their country of nationality were outlined in Chapter 3 of this thesis. Figure 11 below provides a statistical representation of the number of boats arriving in Malta against the average number of transnational migrant subjects on board the boats for the period 2002–10 (NSO 2010). This data thus depicts the pattern of boat arrivals for this period. In both 2002 and 2009, the average number of transnational migrant subjects on board a boat stood at over 80. The lowest average number of transnational migrant subjects arriving in Malta was in 2010 – a reduction that may be credited to the bilateral agreement between Italy and Libya (Phillips 2010). The other lowest average occurred in 2007 during the operational period of Operation Nautilus II, a Frontex mission in the Central Mediterranean. The unrest in Libya has seen more boats arrive in the Central Mediterranean (UNHCR 2011a). Numbers have increased dramatically since the conflict, totalling over 50,000
from January to September 2011 for Lampedusa, and over 1100 for Malta by the end of March 2011 (Hammarberg 2011). The UNHCR reported that the first two boats that arrived in Malta from Libya since the crisis were carrying a total of 535 transnational migrant subjects, suggesting that much larger numbers of people are now arriving in Malta (UNHCR 2011a).

Figure 11. Number of boats arriving in Malta and number of transnational migrant subjects on board 2002–10. Data compiled from NSO (2010)

The AFM, who are responsible for coordinating the search-and-rescue operations in the sizeable area around Malta, have had their resources placed under considerable strain since 2002, when the numbers of people arriving by boat began to increase. Most of the boats that arrive in Malta are rescued by the Armed Forces, partly because Malta has such a large search-and-rescue area:

Two thirds of arrivals are rescue operations. Not all the boats raise the alarm. They get information from people themselves in Malta. Sometimes they contact the guard in Rome who notifies the coast guard in Malta. (LE 2)

At times they rely on the assistance of commercial and other smaller fishing vessels. The number of boats that go missing is significant. One NGO source said:

We hear about boats going missing from the news and from the armed forces. I would estimate it to be hundreds per year. Maybe 300 to 600 were killed in the Mediterranean each year. The Mediterranean is one giant graveyard. (NGO 2)
There is no clear reporting or accounting system for the number of boats that go missing. Accounting for deaths at the border is often left to informal networks and is not reliably reported by the media:

I know the Italian authorities got to know that two big boats sunk of 200 people. Because the Nigerian smuggler in Libya says, where are the girls? They waiting for the boat and they don't arrive. I have 30 girls. In this phone call registered by the police they understand that two boats with 100 people each sunk. Once sunk you don't know about them. This was last year. It was on the news in Italy. It was in Italian. (NGO 1)

Thousands of transnational migrant subjects have perished in the Mediterranean over the past decade (ICMPD in Fischer-Lescano et al. 2009). Of the Somalis leaving for Yemen, it is estimated that 3000 died in 2008 alone. Since the conflict in North Africa erupted, 1931 transnational migrant subjects died in the Mediterranean during the first seven months of 2011 (Martin 2011). Given the huge number of deaths and the high incidence of border crossings by sea, there is arguably an increased legal obligation on the government authorities of EU Member States to ensure the safety of people who use this method of travel. The deaths of transnational migrant subjects at sea evinces the prevalence of both direct and structural violence facing those seeking to cross borders into the EU.

Securitisation of migration can be observed to increase the cost of travel by boat to southern Member States of the EU. Media reports have suggested that the cost of the journey from Libya to Europe has dropped dramatically since the Libyan conflict unfolded (Chulov & Tisdall 2011). Conflicting accounts were provided to journalists from The Guardian newspaper about whether or not Libyan authorities were involved in organising transnational migrant subjects to secure travel by boat to the EU during the conflict. The UNHCR had apparently received reports that the Libyan Army was orchestrating the increase in boats leaving Libya for Europe. There are also reports of casualties as a result of the hasty departure and lack of regard for safety of those migrants on board (Chulov & Tisdall 2011). The securitisation of migration, coupled with significant political events, has had a strong influence on the fluctuating cost of smuggling operations between Libya and Member States of the Central Mediterranean.

Bilateral agreements struck between Member States and third countries have been implemented to avoid obligations owed to transnational migrant subjects at sea. This is the case with the agreement between Italy and Libya, which allows for boats to be returned to Libya without those on board receiving access to refugee determination procedures (Andrijasevic 2006; Monzini 2007). The impact of this bilateral agreement between Italy and Libya is clearly evident when comparing the approach taken by the Libyan authorities towards asylum seekers heading to Europe prior to and following the agreement. The law enforcement participants interviewed for
this research were instructive in this regard. They were easily able to identify why they believed the Libyan authorities were involved in assisting the border crossing of people across the Mediterranean to Italy and Malta, prior to the agreement:

The boats that people arrived on would have been easily distinguishable to a functioning coast guard. They were waylaid with people and the nature of the boat meant they could only go a small speed, of around 10 knots. They would have been detectable to Libyan authorities. (LE 1)

Law enforcement officials in Libya appeared to be closely involved with facilitating departure to Malta. The Treaty of Friendship between Italy and Malta is believed to have resulted in a sharp increase in arrivals in 2008, and a decline in border crossings through the Central Mediterranean in 2010. One law enforcement official remembered quite a variant between the numbers of people on board boats in 2008, between 33 to 262 in two boats. He felt that this change in size was prompted by a concern among agents in Libya that the law was about to change and that they had to move a lot of people across before it did:

Italy has taken a stand on this issue and made this difficult by taking them back. They are big boats. The trouble is they will send as many as possible now. Instead of nine boats, 30 in each, they will try with big boats, sending them all together. (LE 2)

The implementation of the agreement between Italy and Libya resulted in a dramatic decrease in boats arriving in Malta. The ‘hotspot’ for ‘illegal migration’ for 2010 then became the Eastern Mediterranean (FRONTEX 2011b: 14). From 2007, there have also been reports of an increased number of Somalis arriving on the shores of Yemen (Frontex 2011a).

Interdiction

The securitisation of migration has had a significant impact on the number of people arriving in Malta, the length of time they are on a boat and the safety of their boat journey. The practice of interdiction is having the greatest impact, involving the return of boats containing asylum seekers to Libya, after they have reached international and sometimes Italian or Maltese waters (Betts 2010; Betts & Durieux 2007). In 2009, Italian authorities rescued 227 migrants in waters just off Lampedusa and instead of enabling them to land in Italy, returned them to Libya (JRS 2009). As of November 2009, 1409 people had been forcibly returned to Libya and detained there (JRS 2009), their claims for refugee protection not reviewed before their return. This was described in Malta as a ‘very positive step which we support’ by Home Affairs Minister Carmelo Mifsud Bonnici (JRS 2009: 2).
Malta’s Home Affairs Minister has made clear the government’s support for the policy of interdiction but its exact involvement in the practice was less clear until an incident that occurred in 2010. In June of that year, the AFM went to the rescue of a vessel containing 55 Somalis, located about 45 miles south-east of Malta (AI 2010d). According to interviews with survivors taken by Amnesty International (2010), the AFM vessel arrived first and took on board five women who were judged to be particularly vulnerable, and handed out life jackets, biscuits and water to the others still on board their original vessel. Another boat then approached, the crew of which spoke to the asylum seekers in Italian and English. Believing that they would be taken to Italy, 27 people boarded this third vessel, including 18 men and nine women, until one migrant heard the vessel officials talking in Arabic. Accusing them of being from Libya and fearful of being returned there, others refused to board the ship and were picked up by the AFM vessel, some after having jumped into the water.

According to Amnesty International, the 28 Somalis who were taken to Malta were all released from detention within two months, after receiving international humanitarian protection. Those returned to Libya met a different fate:

All 27 were immediately detained in Libya for periods ranging from a few days to a few weeks. In detention, according to reports, all males were lined up against a wall and beaten with batons, and some were given electric shocks during interrogation. Two men remain in unknown places of detention, allegedly because they are believed to have organized the crossing. (AI 2010: 3)

Interviews with some of those on board suggest that they were unaware that their fellow asylum seekers were being taken back to Libya (AI 2010d). They claimed that they were told that the AFM boat could not take on board the entire 55 people. They also said that the Libyan vessel was staffed by people who were speaking Italian, and those on board therefore believed they were going to Italy. AFM crew members stated that the people ‘volunteered’ to go back to Libya, yet the UNHCR has questioned the logic of this (Hammarberg 2011). This incident shows the Maltese Government actively supporting practices of interdiction. It also reveals how gendered assessments of vulnerability can facilitate successful border crossing: those women recognised as vulnerable were given priority through this negotiation and entitlement to board a vessel bound for Malta. This can be conceptualised as a further manifestation of an embodied border; extreme hardship in transit en route to Europe can result in being individually selected to enter the EU. The embodied border can also be seen at work in the heavily publicised case of Justice Amin, a transnational migrant subject from Ghana who transited the Mediterranean. Justice Amin set off from Libya on a boat with 26 others. His boat ran into trouble but they came across a tuna fishing vessel. The owner would not take them on board and as their boat began to sink, they managed to attach themselves to the floats on the tuna pen net that the fishing vessel was
trailing. The transnational migrants held their position like this for two days until being spotted by an Italian coastguard helicopter. As a result of this ordeal, Justice and those on the same boat were allowed to stay in Italy (Kenyon 2009).

It is unclear whether the Maltese Government is of the view that the application of the 1951 Refugee Convention does not apply to its operations at sea, or extraterritorially, as have some Member States (Fischer-Lescano et al. 2009). Following the Australian example whereby territory was excised for the purposes of receiving applications for asylum (Pickering 2005), EU Member States have sought to implement similar policies. Legal opinion, however, is not in their favour (Fischer-Lescano et al. 2009; Pallis 2002). Pallis (2002) argues that ‘simply intercepting a refugee ship and towing it somewhere is not permitted under the Law of the Sea’, and that this would also breach obligations under the 1951 Refugee Convention (Pallis 2002: 353). The UNHCR claims that the obligation of non-refoulement exists notwithstanding ‘whether the State first encounters the refugee inside or outside its own territory’ (UNHCR 2001: 7 in Pallis 2002: 344). Commentators argue that not only does the 1951 Refugee Convention apply, but so also does the Convention Against Torture, the International Covenant on Civil and Political Rights and the European Convention on Human Rights (ECHR (Fischer-Lescano et al. 2009). Recently the European Court of Justice ruled that the question turned on jurisdiction (Fischer-Lescano et al. 2009). If the Member State is exercising jurisdiction either with a third state or independently, it will be bound by the laws of that Member State, and that will catch the provisions of the 1951 Refugee Convention. In the incident at sea discussed above, it might be assumed that taking on board those who are vulnerable and providing them with care would amount to exercising jurisdiction. This incident has yet to be tested in any European court and, regardless, applicants in cases before the courts can be deported before their claims are adjudicated (which can take many years), although this is against the statute of the European Court of Human Rights (Helfer 2008).

Reluctant search and rescue – ambivalence at sea

Boats in distress are subject to international maritime law. The ‘duty to render assistance’ and to establish maritime search and rescue facilities is found in a number of international conventions. The primary statement is contained in Article 98 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which states:

1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:

(a) to render assistance to any person found at sea in danger of being lost;
(b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;

(c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

The obligation to provide search-and-rescue facilities is provided for in Paragraph 2 of Article 98:

2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

In addition to UNCLOS, there is the International Convention for the Safety of Life at Sea (SOLAS), and the International Convention on Maritime Search and Rescue (SAR). SOLAS is more specific in detailing the obligation, stating that it 'applies regardless of the nationality or status of such persons or the circumstances in which they are found' (Article 33(1)). This specifically applies to boats carrying asylum seekers. SAR states that refugees taken on board must be provided with medical or other care and then delivered to a 'place of safety'. It is the view of the UNHCR Executive Committee, which functions as a subsidiary organ of the UN General Assembly to advise the UNHCR, that a ‘place of safety’ is the 'next port of call' (Fischer-Lescano et al. 2009). According to the UNHCR, a place is only safe if it guarantees non-refoulement.

Regardless of a state’s ratification of UNCLOS, however, customary international law establishes a duty to rescue (Goodwin Gill 1996: 157). The UN has issued a pronouncement aimed at clarifying state responsibilities. The UN General Assembly made a resolution on the issue in 2007, stipulating that all states are to ensure that steps are taken to provide assistance to persons in distress at sea. This resolution also urges states to cooperate and ensure the effective implementation of the amendments to the SAR and SOLAS relating to the delivery of persons rescued at sea to a place of safety.

Notwithstanding these international agreements, the practices of many EU Member States have exacerbated the distress of asylum seekers on boats at sea by denying their obligations. While the women interviewed in this research did not talk about any direct experiences of interdiction, they did discuss interacting with other vessels at sea. Two of the refugee women spoke of being in trouble on their boat, and of interception by another vessel. One participant described interacting with people on another boat, but only receiving information and no other practical assistance:
We set off at 4 am and it took two days. On the second day the sea was very rough. We were sitting with our knees up to our heads and the water was directly behind me. We were so scared. A big boat came past on the second day and we asked them for petrol. We only had 40L and we were begging them ‘please, please’ for petrol. The boat said no. They said we are only three hours from Malta. But it was the day and we couldn’t see Malta. At night you can see for the lights. But we couldn’t see so we decided to stop and continue at night. Then we arrived in Malta. (Sena)

This narrative demonstrates the reluctance of some vessels to get involved upon coming across a boat in distress with asylum seekers on board. The Head of the Fishing Association in Malta has previously said that fishermen would ‘put the engine in full thrust’ upon seeing a boatload of migrants so as not to lose a day’s work (Lutterbeck, 2009: 132). International attention was focused on Malta when, in May 2007, 27 Africans were found clinging to tuna nets while Italy, Malta and Libya fought to avoid responsibility for assisting them. The men were finally picked up by an Italian vessel and brought to safety (Ostergaard, 2008).

The securitisation of migration processes have gone so far as to result in the punishment of some people for going to the aid of vessels in distress. The participants in this study reported being exposed to life-threatening conditions and interventions by the AFM in what was characterised as a rescue. These rescues, however, are increasingly being criminalised. In 2007, a group of Tunisian fishermen rescued 44 asylum seekers from Eritrea, Sudan and Ethiopia in distress as their boat was about to sink. The fishermen were arrested when they arrived in Lampedusa, and put on trial for aiding and abetting asylum seekers. They were held in jail until 10 September 2007 following a successful petition for their release (Fekete 2009a). In the past, pressure has been placed on Italian coastguards to exclude immigrants from their remit. The Mayor of Lampedusa, Bernardino De Rubeis, described the coastguard as ‘taxi-drivers for organised crime rackets’ and said they are ‘perpetuating the phenomenon of illegal immigration by coming to the aid of migrants crossing the Sicilian channel’ (ANSA 2008 in Fekete 2009a: 95). The law of the sea sets out legal obligations owed to asylum seekers who leave the North African coastline en route to EU Member States. Paradoxically, these obligations conflict with the practice of returning boats carrying asylum seekers to their last port, without review of their claim, as described earlier, and of failing to take responsibility for boats in distress. The Maltese Government has lobbied the EU for additional support and resources, particularly around the summer months, which constitute the peak period for arrivals. Assistance has been delivered in the form of Frontex, but the Maltese Government’s enthusiasm for this intervention has waned, as was explained in Chapter 3. The government has opted out of participating in Frontex’s operations for the past two years because of the condition that Frontex must be allowed to bring the boats it intercepts to the ports of participating Member States (Camilleri 2011).
The EU has provided increased resources to the AFM and funded the operations of Frontex. Based in Warsaw, Frontex was an EU initiative established in 2005 through increased cooperation between the border guard services of EU Member States (Romein 2006: 31). To address the increase in extra-legal migration through the Mediterranean, Frontex had its budget doubled in 2008 (Lutterbeck 2009: 129). During Operation Nautilus, an operation in the Mediterranean off Malta that ran for over 69 days over the summer of 2007, 2942 irregular migrants were intercepted (COE 2008b). As Fischer points (2009) out, the Frontex regulations do not provide a mechanism whereby actions by border guards can be brought before a court and tried. Statistics provided in Frontex’s annual reports only indicate how many people were intercepted and diverted back, not the circumstances of the interdiction or who was claiming international protection. Fischer argues that the human rights monitoring of this organisation needs improvement. Thus, there is a lack of accountability for those involved in these operations, and no process to ensure transparency and that the law of the sea is upheld.

The law enforcement participants in this study confirmed that the Frontex operations, had affected irregular migration trends throughout the Central Mediterranean. One such participant explained the notable change in the types of boats that were coming to Malta during the period in which Operation Nautilus was being conducted by Frontex:

Some claim their boats have been lowered from other boats, but we have no evidence of that. They generally come with life jackets. They were using rubber boats during the time of Operation Nautilus and Frontex because the smugglers knew they only needed to get them to the waters. Generally travel is made by giving one of them a compass and saying drive 10 degrees north. (LE 2)

It can therefore be seen that smuggling operations changed in response to the new conditions under which Operation Nautilus took place. Smugglers knew that they did not need to get migrants very far before they would be intercepted. It is not known how safe these rubber dinghies are in comparison to the boats used during other periods, but it is presumed that a boat ultimately designed not to make it to Italy or Malta would be more dangerous for those on board.

The need for accountability is even more pronounced given the emerging trend that both the practices and policy in relation to rescue at the high seas is ad hoc, and the reluctance evident among many vessel crews to come to the aid of stricken vessels. Klepps (2010) has conducted research on how the inconsistencies and tensions are managed by law enforcement personnel from both Frontex and Malta. This research took place during the operation of Nautilus II, which intercepted 3173 migrants at sea. During Nautilus II, stage II, 700 migrants were returned to Libya, according to the Maltese Ministry. Conversely, the Commanders from the AFM claimed that no migrants were returned because they did not obtain the consent of Libya. Klepp
concluded that there is a persistent difference of opinion about what really goes on at sea. The situation is plagued by confusion and a lack of clarity around legal rules, and decisions are therefore made on an ad hoc basis. Klepp also found that resistance to European common policies, such as the Dublin II Regulation, was being played out on the high seas, instead of within governance institutions, such as the EU parliament (Klepp 2010).

**CONCLUSION**

Structural and direct violence shapes transit in ways that have gendered dimensions. In terms of direct violence, the interviews with the women revealed that women may experience sexual violence, incarceration and assault, or may witness such acts. Women may also be killed while in transit. Gendered and racial inequalities reinforced by the securitisation of migration can be characterised as structural violence. Structural violence is evident in the influence of access to financial resources on transnational migrant subjects’ ability to secure safe passage: those who have fewer financial resources will not be able to afford protection en route to the EU, and will thus suffer a further form of structural violence. That people have to make this journey to migrate in the first place is evidence of structural violence. For women, this includes a number of gendered harms.

The experiences discussed most by the participants covered three sites: the journey through the Sahara Desert, the conditions in Libya and the boat ride from Libya to Malta. Money was a major factor influencing exposure to violence and the nature of one’s journey in transit. This constitutes a tangible impact of the processes of securitisation that bring to bear two opposing regimes – securitisation of migration and refugee protection - on the lives of women who flee persecution in their country of origin. A further structural manifestation of this clash is in the regimes of non-entrée which are characterised by three elements: bilateral and multilateral agreements with transit countries like Libya; containment/warehousing; and interdiction. These practices, illustrative of functionally mobile borders, pose a real challenge to the operation of refugee protection.

Fleeing persecution, serious harm, threat of violence or insufferable poverty in Somalia often requires risking those same or greater harms in order to escape. The women participants are, as Khosravi (2010: 99) writes, ‘caught in the position of being the border’ (original emphasis). This chapter has shown how women’s bodies taken on a currency in border crossing. Rape can be used as a toll or price for crossing borders, sexual services may provide or guarantee passage, and in some instances money can be paid to avoid being raped when crossing borders.

None of the refugee women interviewed in this study mentioned the UNHCR office in Tripoli or obtaining assistance with their refugee claims. This research lends support to the conclusion
reached by Betts (2006, 2010): that onward migration is influenced by the unavailability of protection in countries transited. It is telling that the only legal intervention the women spoke of in transit was detention, which further contributes to the insecurity and propels onward migration. The women interviewed in Malta have demonstrated their agency by negotiating the obstacles and dangers faced in their journey and arriving in Europe. The next chapter explores the data drawn from the interviews with women about their experiences in Malta upon arrival.
CHAPTER 8: PUNISHMENT FOR ‘CRIMES OF ARRIVAL’ – WOMEN’S EXPERIENCES OF MALTA

Securitisation of migration discourses, policies and practices shape women’s experiences of arrival in Malta. As an EU Member State, Malta is required to apply the Common European Asylum System which has introduced restrictions on access to asylum and refugee protection. Located on the EU’s southern border, Malta has been directly impacted by these policies; the introduction of compulsory visa requirements and carrier sanctions coincided with the beginning of the phenomenon of asylum seekers arriving by boat in 2002. Malta, which prior to joining the EU had relaxed visa arrangements with many countries in North Africa (LE 1), has now undergone a process of re-bordering to align with EU law and policy.

Irregular migration is viewed through the prism of a securitisation framework within the Maltese context. This involves the construction of transnational migrant subjects as a security threat that warrants a security-focused solution. Government rhetoric has focused on ‘the burden of illegal immigration’ (Abela 2011) and describes Malta as being in a ‘truly vulnerable position’ as regards the ‘fight against irregular migration’ (MJHA & MFSS 2005: 6). This vulnerability is attributed to ‘its strategic position, exposed coastline and size’. Policy statements of the Maltese Government use unspecific but evocative terms in characterising those on board the boats (almost 100 per cent of whom apply for asylum) as a challenge to ‘public order’ and ‘national security’. In Malta, as described in other contexts (Bigo 2005), no evidence base is used to substantiate the conclusion that this population constitutes a security risk.

The criminalisation of migration (Melossi 2003) begins at the stage of arrival in Malta. Arrival is defined as occurring at the site at which people are brought to Malta. Punishment was the main theme to emerge when the women participants talked of life in Malta and their immediate struggle to survive. Transnational migrant subjects are punished in relation to three key dimensions of daily life – legal and administrative, social, and economic – and this punishment has clearly gendered inflections, all of which is explored in this chapter.

LEGAL AND ADMINISTRATIVE PUNISHMENT OF REFUGEE WOMEN IN MALTA

For their ‘crimes of arrival’, transnational migrant subjects are punished in specific legal and administrative areas of life in Malta. Indeed, it is in the legal and administrative sphere that the ‘enforcement rituals’ that produce ‘illegality’ and exacerbate the ‘ever-present vulnerability’ (De Genova 2005: 246-248) really begin. Punishment is effected both explicitly and implicitly through increased surveillance, detention policy and the dilution of refugee protection.
SURVEILLANCE

All arrivals are fingerprinted as part of the EU surveillance machinery that makes the arrival of every individual in Malta known to agencies all over the EU (Loader 2002; Hayes 2006). For asylum seekers, this means they are forever tied to Malta as their country of arrival in the EU. Fingerprints are taken as part of the initial process of receiving arrivals, as described by one law enforcement participant:

With the boat we would go out and assess the family units and the vulnerable cases or those with mental disorders, and then we let AWAS [the Government Agency for the Welfare of Asylum Seekers] know. Then we take their photographs and fingerprints. They are also medically cleared which includes a chest x-ray for tuberculosis. (LE 2)

These fingerprints are recorded as part of the Eurodac information system that is shared with other agencies in Europe, and act as a way of tracking the movement of transnational migrant subjects (Hayes 2006; Loader 2002). They are emblematic of the elasticity of the functionally mobile border that keeps transnational migrant subjects under the gaze of law enforcement. Eurodac has implications for onward migration in that if people travel to other EU Member States and apply for asylum, they will be deported back to Malta as part of the Dublin II Regulation. In this regard, the impact of the securitisation of migration is revealing – if people could arrive at their destination by aeroplane they would not have to arrive in Malta by boat first, and then seek to continue their journey to other parts of the EU. The requirement to be fingerprinted was a source of frustration for many of the refugee women interviewed – a topic further examined in Chapter 9 which discusses onward migration. Taking the fingerprints of all those who arrive extra-legally in Malta functions as an EU-wide surveillance mechanism that informs law enforcement authorities of the migration route of every transnational migrant subject and operates to contain them in Malta.

DETENTION

We put them in a detention centre for up to 18 months. The government policy is that that should serve as a deterrent. George Abela, President of Malta (Sheridan 2011)

Malta’s policy of mandatory detention is explicitly designed to deter transnational migrant subjects from arriving in Malta by posing the threat of punishment. Whereas the deterrent aspect is publicly acknowledged, as in the above statement by the President of Malta, the punishing impact of detention is not made as explicit. From the state perspective, punishment flows from the failure of transnational migrant subjects to heed the deterrent message. All those who arrive in Malta without a relevant visa are declared to be ‘prohibited’ immigrants and placed in
detention. However, the link between either specific or general deterrence and the subsequent use of mandatory detention is unclear. Rather, the justification advanced is put in vague but no less powerful terms: ‘the national interest and more specifically, for reasons concerning employment, accommodation and maintenance of public order’ (MJHA & MFSS 2005: 6). Detention is used in Malta as an expression of the sovereign power of the state to exercise direct control (Foucault 1977), and there is no national law that sets a limit on the length of detention. Since 2005, it has been government policy that people will be detained for a maximum of 12 months (if they have applied for asylum but have not yet received a final decision) or 18 months (if they have not applied for asylum or if they have been finally rejected). One NGO participant reported that prior to 2005 there were cases of people being kept in detention for five to seven years. This policy creates the impression that asylum seekers are unruly and a threat, a danger to both individual and collective security (Brown & Pratt 2000; Huysmans 2006; Malloch & Stanley 2005). That this impression reverberated among the wider community was confirmed by some of the participants in this study:

Detention marginalises and isolates people. It excludes them from the labour market. It builds a strong prejudice against Africans that exists now. Detention makes people think they are dangerous. It contributes to images and websites being terrible and xenophobic. (NGO 2)

Later parts of this chapter will demonstrate how, upon release from detention, transnational migrant subjects face social exclusion in several areas of daily life in Malta, including employment, access to healthcare and living standards. Mandatory detention distances the confined population from the local population and exacerbates misconceptions about detainees (Garland 1996: 20).

As at February 2009, there were eight detention centres in use on Malta, all behind army or police barracks, in three locations: Lyster, Safi and Ta'Kandja (JRS 2009). Since 2005, detention centres have been run by the Detention Service, which is comprised of seconded personnel from the AFM and the Malta Police (Vassallo & Gauci 2009/2010). The overwhelming majority of Detention Service staff are male (JRS 2008: 13). While the government claims that all personnel have received human rights training, their aggressive handling of protests by detainees over conditions in detention has led some to question the value of this training (ECRI 2008; Ostergaard 2008).

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9 Immigration Act Article 5(1).
10 These are also termed ‘closed centres’ by the Government of Malta.
The architecture behind detention centres in Malta reflects a gendered design. Detention centres were designed to contain what was assumed to be a relatively small number of single men arriving by boat in Malta. As one law enforcement participant described:

In 2002 we had just opened a detention centre for 200 people. Then 220 people arrived in February 2002. We had four or five boats arrive in one short period. Then on 5 March we had 204 people arrive in one boat. These were not centres designed for family units or families. They were designed for single males. We had to build ad hoc detention centres. We had to quickly pass legislation to make more detention centres. (LE 1)

The result of such ad hoc planning for women is that they are forcibly detained in facilities which, until mid-2009, were not gender segregated (MSF 2009a). Since mid-2009, single women have been detained separately at Ta’Kandja Detention Centre (JRS 2009). The impact of detaining men and women together in cramped conditions raises numerous issues for women, particularly those with previous exposure to sexual violence:

I have stopped feeling safe since I was raped ... and now I have to share a room and sleep in a bed a few steps away from that of a stranger. How can I feel safe and heal? (JRS 2009: 12)

According to a JRS report, in one detention centre there were a total of three showers without doors, shared by all of the detainees, anywhere from 50 to 80 people (JRS 2009). Women came up with ways to address the lack of privacy by using towels and screaming loudly when others entered (JRS 2009: 14).

While challenges to the lawfulness of detention in domestic courts such as the Constitutional Courts in Malta and the Courts of Magistrates have been unsuccessful (JRS 2009),11 the European Court of Human Rights has been particularly critical of Malta’s policy and administration of mandatory detention. In the case of Louled Massoud12, the Court held that Malta had breached Article 5 of the European Convention on Human Rights (ECHR), by detaining Massoud, an asylum seeker whose claim for asylum had been rejected, for 18 months. The Algerian Massoud had been detained by the government under the guise of ‘deportation’. The Court found that there were ‘grave doubts’ that grounds for detention were valid throughout the whole time of his detention, ‘owing to the probable lack of a realistic prospect of his expulsion


and the possible failure of the domestic authorities to conduct the proceedings with due

diligence’ (at 69). Problematically, the Court found that the ‘Maltese legal system did not provide
for a procedure capable of avoiding the risk of arbitrary detention pending deportation’ as there
was no ‘effective and speedy remedy’ for challenging the lawfulness of detention (at 46). In these
circumstances the Court found that Malta had breached Article 5 of the ECHR. Additionally, the
Court suggested that Malta’s geography – a small island with few avenues of exit – lent itself to a
more open policy whereby detention would be unnecessary for those facing deportation (at 68).
Despite the Court’s damning assessment, the Maltese Government has not shifted its position on
mandatory detention (see the response by the Government of Malta in Hammarberg 2011).

**VULNERABLE STATUS ASSESSMENTS**

Under Regulation 14(1) of the *Reception Regulations*, ‘vulnerable persons’ may be released
from detention. Vulnerable persons include: minors, unaccompanied minors, pregnant women
and those vulnerable by their age or physical condition (MJHA & MFSS 2005: 12). Some NGO
and transnational migrant subject participants reported that ‘vulnerable persons’ assessments
are problematic. First, even where it is obvious that a person qualifies as a ‘vulnerable person’ –
for example, a pregnant woman – they must be assessed and have accommodation sourced in
the community. This results in delays of some months (ECRI 2008: 15; JRS 2010; WAGD 2009).
One participant said that she spent considerable time in detention pregnant before being
released:

> Here is not good. I was in detention for three weeks. I came on the boat pregnant. (Ayan)

In a recent report, Hammarberg (2011) stated that vulnerable person determination for women
with children and for pregnant women was ‘prompt’, in contrast to other vulnerable groups. The
process of assessment and release took a long time for those with less visible health issues such
as mental health problems.

The second way in which vulnerability assessments were problematic relates to how the
assessments of vulnerable persons are conducted. The initial assessment is carried out by a
social worker who writes a report that goes to the Vulnerable Adult Assessment Team,
comprised of a panel of three members. If the decision is positive this is referred to a Principal
Immigration Officer, who grants release (JRS 2009: 12-13). According to one NGO participant,
the process has many flaws:

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13 *Reception Regulations*, Malta.
Assessments that determine ‘vulnerability’ are flawed. There are very few social workers employed by AWAS so they don’t really have time to interview people and really make an assessment. They also don’t liaise with other non-government organisations who may already have met with this person and have information about them. (NGO 1)

The reliance on social workers was criticised by the NGO participant who felt that it is irresponsible not to have somebody with medical training carry out assessments. He argued that to be able to detect mental illness, it is necessary to have a medically trained practitioner, be it a doctor or psychiatrist, involved in the assessment process to properly recognise vulnerability. NGO participants also criticised the tools used to make assessments of vulnerability and their administration:

They use a detailed questionnaire with 127 questions to make an assessment. It’s meant to be a one-hour interview. I had one client that they interviewed at 7.30 in the morning and the client was under heavy medication. Of course the client did not handle the assessment at all and their assessment was therefore completely off. If they had waited until the afternoon they would have gotten more information from my client. (NGO 2)

Thus, it appears that this process is inappropriate and inadequate for obtaining an accurate assessment of detainees, and is poorly placed to comment on the types of supports that might assist a person once released into the community.

Third, follow-up on those assessed as vulnerable is reportedly poor. No extra resources are made available to those assessed as vulnerable upon release (JRS 2009). The information provided in the assessments was seen to lack the critical information required to provide support services to those judged as vulnerable, who are then ultimately released:

The assessments and referrals that they do make give no information. When I talk to the person I sometimes get totally the opposite story to what the assessments report. In the end you have to go and do another investigation yourself. The whole process is a waste of time and resources. And this is people that they do consider vulnerable! (NGO 1)

The emerging picture of how vulnerability is handled in Malta suggests more of a sorting process that is guided by short-term, bureaucratic expediency rather than health-based imperatives. Detention is universally applied but exceptions to the rule are poorly administered. The process of moving people out of detention was seen by NGO participants as creating an increased workload for the health professionals who work with transnational migrant subjects upon release.

For transnational migrant subjects, access to healthcare is hindered by the absence of a clear policy (Vassallo & Gauci 2009/2010). Under Malta’s Refugees Act 2000, asylum seekers are
entitled to free government medical care (Article 10(1)), yet the law is not clear on whether this access should equal that available to Maltese nationals or whether a specific set of rights applies. At law, migrants with long-term employment or sufficient means are obliged to contribute to their healthcare costs (Vassallo & Gauci 2009/2010: 21). NGO participants felt that resources were actually being wasted in the administration of healthcare for transnational migrant subjects:

There are gaps in primary and secondary healthcare. There is no proper follow-up. If someone is diagnosed with malaria they are not hospitalised. They don’t even open up a file for people. They have to start up the whole process again when they come back. This doubles up the resources. There is free medical care for the Maltese, we think the minimum rules should apply to migrants if not more! If you found out the cost of one session of healthcare, you could compare that to the cost of providing sanitary accommodation to people. Even from an economic perspective it does not make sense. (NGO 2)

These healthcare practices resemble policies and practices pursued in France and the UK which foster the exclusion of a community (Bloch & Chimienti 2011; Fekete & Webber 2010). The argument that migrant populations are only in a country temporarily defies the narratives of participants who reported that they were in Malta for a number of years. As the participant argued above, the situation does not make efficient or rational economic sense. This created a two-tiered health system whereby migrants were kept out of the mainstream system and ostensibly denied quality treatment, although this is reportedly changing and ‘hospitals help and have a better understanding now than before’ (NGO 1). Moreover, some participants stated that the creation of a Migrant Health Unit and the use of ‘cultural mediators’ have resulted in improvements.

The ‘vulnerable status’ assessment process has a gendered impact. We know from the previous chapters on exit and transit that a significant proportion of women experience sexual violence and trauma en route to Malta, and some arrive pregnant. In this vulnerable status determination process only the most visible cases – of which pregnant women and women with children would presumably form a part – are likely to be released. The women participants reported that the assessment process typically takes weeks – weeks during which time they were exposed to harsh conditions of detention, as discussed in the next section, which include poor sanitation, poor nutrition, and poor access to clean water. Pregnant women are likely to be disproportionately affected by these conditions. In addition, research suggests that quantitative methods of assessment, like those used in these vulnerable status assessments, are not conducive to exposing the true nature of women’s experiences, particularly where there are language barriers (Silverman 2000). Women with mental or less visible physical problems would therefore be less likely to be assessed as vulnerable and released from detention. Moreover, the
lack of follow-up and referral for those who are released as vulnerable suggests that the mechanism serves only as an exception to confinement. While such release does provide a reprieve, it does raise questions about the priority being placed on the legitimate healthcare needs of those who arrive by boat in Malta, particularly when they identify as asylum seekers in need of protection.

PUNISHING CONDITIONS OF DETENTION

As discussed earlier, the appalling conditions of detention in Malta have been resoundingly criticised by numerous groups (AI 2010a; Hammarberg 2011; HRC 2009; ICJ 2008; JRS 2008; MdM 2007; MSF 2009a; Vassallo & Gauci 2009/2010). The Lyster Barracks detention centre was visited by the Rapporteur from the EU Committee on Civil Liberties, Justice and Home Affairs (LIBE, 2006, p. 8), who described it as follows:

In the actual centre itself the living conditions are appalling. Men and women live together in extremely tight spaces. In one room there are two married couples living together, each couple sleeping in a single bed, as well as two single girls. The delegation met women who were four months pregnant and an old woman. At the entrance to the centre there is a prison for migrants guilty of some misdemeanour. One of them, a deaf mute, is accused of hitting his wife. There are only two functioning toilets for more than 100 people. The migrants have organised shifts for cleaning. The hygiene conditions and the overcrowding are intolerable. The women are not given any sanitary towels. Here, too, people are given out-of-date drugs and poor quality food, and they are not allowed to go out. There is not even an outside area at this centre.

As a result of the Maltese Government’s failure to provide health services to detainees and the deteriorating conditions in detention, the international emergency relief NGO Medicins Sans Frontières (MSF) stepped in to provide healthcare in the detention centres in Malta. In 2008, however, MSF ceased its operations in Malta in protest at the Maltese Government’s unwillingness to address the mounting problem (MSF 2009b, 2011a). MSF later returned in 2009. Medical care is now provided by two private companies but the services are described as inadequate for the need, and gaining access to pharmacies to fulfil prescriptions can take many days (MSF 2009a; Vassallo & Gauci 2009/2010).

The women participants in this study reported experiencing long periods of confinement in difficult conditions; one described the conditions as ‘very uncomfortable for women’ (Pia). They also described their relief and joy at being released:

I have been in Malta for two and half years. I was in detention for seven months. That was bad. There was no freedom. Now I’m so happy, I’m happy to have freedom. (Nina)
While the women participants chose not to elaborate further on how conditions were ‘bad’ or ‘uncomfortable’ for women, the equation of detention with the absence of freedom conjures vivid imagery. The Jesuit Refugee Service conducted interviews with women in detention in which participants reported being denied access to open air and having to endure inadequate food, not being able to cook for oneself, a lack of access to water and personal hygiene items, and minimal recreational or constructive activities to pass the time (JRS 2009). MSF reports that 35 per cent of people have illnesses like chicken pox, respiratory and skin infections, and gastroenteritis, largely because there is no means of isolating detainees with contagious diseases (MSF 2009a). The JRS (2009) study also found that 80 per cent of participants stated that they had no regular access to telephones (JRS 2009: 10). In most centres, visits by family members are prohibited, and the only people who can gain access are some NGO representatives, lawyers, religious persons and the UNHCR (JRS 2009: 10-11). These conditions affect every aspect of daily life and undermine the independence of those detained. Seven months in confinement under such conditions, as Nina faced, requires agency and resilience.

Women are exposed to domestic violence in detention and have reported incidents of abuse by staff. The compromised safety of people in detention, particularly women, was highlighted by a JRS (2009) study in which twenty-two per cent of participants reported being physically assaulted in detention: 68 per cent by other detainees, and 32 per cent by staff (JRS 2009: 9). Only 18 per cent of the detainees assaulted had complained about it, all of whom said that they received no response. Domestic violence was also a significant problem:

Domestic violence is probably the most common form of SGBV [sexual and gender-based violence] experienced by immigrants in Malta, compared to other forms of harm which migrants experience frequently outside Malta. (JRS 2008: 32)

Stressors arising from the journey to Malta and the cramped conditions of detention may contribute to an increase in domestic violence for women travelling as part of a family group (JRS 2009). Some participants in the JRS study stated that the domestic violence actually started in detention in Malta, as a result of the confined and difficult conditions (JRS 2009: 35). An absence of social supports to mediate disputes and respond to the violence made the situation worse. Thus, detention centres can be seen to exacerbate the potential for domestic violence to occur. The impact of detention on people’s health is examined in more detail later in this chapter.

PREGNANCY IN DETENTION
The NGO participants 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. This information was sought from the lead government organisation responsible for asylum seekers, AWAS, but it declined to release any such information (Personal Communication 18 January 2011). Many of the women arriving in Malta had experienced rape or other sexual violence either in Somalia en route, in transit in Libya or at other parts of their journey (HRW 2009a, c; MSF 2009b; Pickering & Gerard 2011). Sometimes this had the outcome of them arriving in Malta pregnant:

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 you have no way of sustaining yourself. (NGO 2)

The sexual violence experienced during the exit and transit stages, discussed in the previous two chapters, shapes women’s experiences of arrival in Malta. Women may arrive pregnant or with children, and bear the responsibility of being a child’s primary carer.

Pregnancy and childbirth raises a cascading series of issues for women in detention. Two of the women interviewed said they were pregnant when they arrived in Malta. Two more became pregnant in either detention or Open Centres in Malta, although it is reasonable to suggest that the numbers were higher because of the reluctance of women to discuss what were referred to as ‘forced pregnancies’. The lack of mainstream healthcare services in detention makes the situation untenable for pregnant women.

Detention centres in Malta are not focused on vulnerable groups. There are a lot of rape cases in detention. They 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 no access to abortion. FGM\(^{14}\) 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, pain, vaginal discharge,

\(^{14}\) FGM is used here as an abbreviation for ‘female genital mutilation’, also known as ‘female genital cutting’ and ‘female circumcision’ (see Gruenbaum 2005).
itching, pain during intercourse and obstructed normal outflow. Gynaecologists here are not aware of the issues. (NGO 2)

The NGO participants interviewed suggested that women often resort to pregnancy as a way to gain release from detention and be relocated to Open Centres, as single women are not classified as vulnerable and therefore are unable to attain ‘vulnerable status’. The law enforcement participants saw pregnancy as a strategic decision in relation to both detention and future settlement:

They make themselves pregnant. It’s a strategic decision. (LE 1)

Pregnancy is an issue here. There is a rumour that it can help your status. They get pregnant and have their babies in many countries. They think that you can get citizenship that way but it doesn’t work like that. You get the citizenship of your parents. (LE 2)

The view that women make a strategic decision to get pregnant and give birth in different EU Member States in order to obtain citizenship, reflected in the comment by the second law enforcement participant cited above, is a matter discussed further in Chapters 6 and 9. Compounding the gendered impact of detention is minimal access to contraception in detention. The perpetration of sexual violence, and resultant 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 & Knepper 2008) – as one NGO participant commented, ‘we are more Catholic than the Pope’ (NGO 1) – and the government does not provide access to condoms in detention. As one participant reported:

There are a number of pregnancies to single women in detention. Aside from when MSF and another NGO were there distributing condoms, aside from these two interventions, to my knowledge, there was no access to prophylactics. (NGO 1)

The ability to have control over one’s own reproductive health is compromised by detention. Moreover, abortion is illegal in Malta, further truncating options for women who fall pregnant. The impact of detention is gendered, with women acutely affected by the conditions and the lack of reproductive health options in detention.

DILUTED REFUGEE PROTECTION

Since 2008, close to 100 per cent of all those who arrive by boat apply for asylum (NSO 2009, 2010). One of the law enforcement participants expressed the view that methods of distributing information about asylum have improved and are resulting in higher asylum application rates (LE 2). As an EU Member State, Malta is obliged to ‘harmonise’ its law on asylum with the Common
European Asylum System. Up until 2000, Malta was without a domestic refugee-processing framework. Reflecting its modern history as a country of emigration, Malta’s domestic institutions and policies had been geared towards people departing Malta. Despite signing the 1951 Refugee Convention in 1971, the government had opted to outsource its refugee determination procedures to the UNHCR Rome office, which would handle all determinations of refugee status (Amore 2007); however, this changed in the lead-up to Malta becoming part of the EU. In passing the Refugee Act 2000, the Maltese Government created its own refugee-processing framework. It established the Office of the Refugee Commissioner to hear and coordinate applications in the first instance, and established a system of appellate review with the Refugee Appeals Board. This new national system operated autonomously in processing and deciding applications for refugee status from 2002 onwards (MJHA 2009).

The overwhelming majority of people who are recognised for humanitarian protection in Malta receive a diluted version of refugee status: either subsidiary protection or temporary humanitarian protection (THP). Reflecting its intake of people who have experienced what are widely regarded as conditions of persecution, in places such as the Horn of Africa, Malta has one of the highest humanitarian recognition rates in the industrialised world, yet few applicants receive refugee status (UNHCR 2009b). In 2009, of the 2575 applications for asylum processed, 20 (0.78 per cent) received refugee status, whereas 1671 (65 per cent) received subsidiary or THP (Hammarberg 2011). In 2009, women comprised 18 per cent of the successful applicants, and also 18 per cent of total applicants. In 2010, 348 applications for asylum were processed, of which 43 (12 per cent) received refugee status whereas 179 (51 per cent) were granted subsidiary protection. The small number of applicants for asylum in 2010 has resulted in a significant increase in successful applications for refugee status. Women comprised 27 per cent of successful applicants, despite comprising 20 per cent of total applicants. These statistics indicate that women fair better when fewer people arrive and apply for asylum. This is an area requiring further research. Also in 2010, THP was awarded to a further 500 people whose applications had previously been rejected but who had no possibility of returning to their country of origin. A gender breakdown on those awarded THP has not been made available by the government.

The diluted forms of legal protection confine women to Malta with a time limit on how long they can reside, work and receive humanitarian protection. Subsidiary and THP status is subject to time limits and must be periodically renewed:

We renew the certificate for those with subsidiary protection after three years and for THPs after one year. It is dependent upon what is the case in their country of origin. There has to be argumentation made for the protection to be removed. It is also subject
to appeal. For subsidiary protection, one will still have it if they do not renew it. Only with the THP it can be revoked without them knowing about it. (LE 1)

These lesser forms of protection, heavily favoured by the Maltese Refugee Commissioner, provide temporary protection with fewer entitlements or rights than offered by refugee protection (McAdam 2005). A THP status can even be revoked without a person being brought before the Commission. These diluted forms of status keep transnational migrant subjects in a constant state of uncertainty. An NGO participant confirmed that legal status was a considerable stressor for irregular migrants:

Subsidiary and temporary humanitarian protection status mean that people have no stability. Only 5 per cent are granted refugee status. That is the only protection that can’t be taken away. And that does not entitle someone to family reunification. Not even within Europe. Resettlement is only open till the end of 2011. This is a stressor for migrants. What is going to happen if they don’t get resettlement? There are no lasting jobs here. They won’t receive employment benefits here even after three to four years of working in Malta and paying taxes. (NGO 2)

Only refugees are entitled to social security benefits in Malta. All others are given a per diem of 130 Euros when released from detention, or 80 Euros per month if they are rejected asylum seekers (LE 1). The need to supplement these allowances is critical as they are less than the minimum wage in Malta by more than 20 Euros, which is extremely difficult to survive on, particularly if one is supporting children.

It is clear from statements on the public record made by the Government of Malta that it is keen to keep the administration of benefits for asylum seekers and refugees away from the social welfare stream and to locate it within immigration control. The Maltese authorities have expressly stated that they do not want allowances paid to asylum seekers and refugees to be considered part of a social benefit system, but rather as a ‘food and transport allowance for residents of Open Centres’ (Hammarberg 2011: 14). Thus, Malta is conforming to the practice of fostering the exclusion of a community (Bloch & Chimienti 2011; Fekete & Webber 2010). This policy response separates transnational migrant subjects and their care from a humanitarian to a security framework, fanning perceptions of this population as ‘unruly’ and a threat, and clouding the complexity of the issues surrounding forced migration.

The unavailability of family reunification under these diluted forms of legal protection was a significant strain on the women interviewed. Dependants, if they are in Malta at the time the asylum determination decisions are made, have the same rights and benefits as the primary holders. If they are not, there is no further provision for family reunification. For the women participants, this seriously compromised their status as primary caregivers and their traditional
parenting roles. This is a source of concern and instability for transnational migrant subjects, particularly given the dispersed locations of the members of some refugee families.

I have children but they are in Ethiopia. They are living there. My husband was with them before he left. I hope that when I get to America I can be reunited with all of them. I will have to talk to the IOM about that. There are several tests with the American program. I am up to the stage where they do a background check. I have only subsidiary protection here in Malta. (Sena)

The practice of the Maltese Refugee Commissioner of awarding subsidiary protection to more people than refugee status furthers the sense of isolation and uncertainty experienced by women.

These diluted forms of legal protection have a significant impact on the livelihoods of transnational migrant subjects in Malta. In a recent report, the Commissioner for Human Rights of the European Council was particularly critical of the lack of opportunities for migrants in Malta, in what he characterised as their ‘long-term livelihood’ (Hammarberg 2011: 3). The Commissioner found that mechanisms presently in place for those with subsidiary protection were not ‘conducive to integration’ (Hammarberg 2011: 14): ‘this system effectively marginalises and perpetuates the social exclusion of migrants, who find themselves at serious risk of destitution’ (Hammarberg 2011: 14). He urged Malta to establish ‘viable, long-term avenues for local integration, which should be supported by an adequate integration programme and eventually lead to family reunification and citizenship’. Without this, he argued, social exclusion will continue and transnational migrant subjects will be at serious risk of destitution (Hammarberg 2011: 3). EU policy constrains asylum seekers to their first country of entry to the EU, but this is not aligned in practice with conditions that enable people to live and work in Malta without ‘serious risk of destitution’.

A COMPROMISED REFUGEE DETERMINATION SYSTEM

The compromised nature of the legal protection provided to asylum seekers by the Maltese Office of the Refugee Commissioner is made clear when contrasted with the US Refugee Resettlement Program. As the next chapter examines, the US operates a resettlement program in Malta for those assessed as refugees. Under this program, 654 asylum seekers processed in Malta have been recognised as refugees since 2006 and have been resettled in the US (TOM 2011b). In the period 2006–11, Malta recognised a mere 111 asylum seekers as refugees, or around 17 per cent of the total number recognised under the US Refugee Resettlement Program. The law enforcement participants acknowledged the disparity, arguing that it was a reflection of the pressure on Malta’s finite resources (LE 1). There are clear inconsistencies
between Malta’s refugee determination framework and that used by the US, even though both apply the 1951 Refugee Convention.

Limited access to legal representation for asylum seekers in Malta is compromising the legal process. In the EU, legal aid must only be available to asylum seekers who are rejected in the first instance, and who appeal their rejection. This is despite clear links between legal representation and higher rates of a successful outcome for asylum seekers (Bhabha 2004). In Malta, no legal aid is available to asylum seekers at the first instance. Instead, they must pay for their own lawyer or avail themselves of free representation. Legal aid is provided by non-government organisations, but availability is limited and the quality is reportedly poor (Hammarberg 2011: 13). Furthermore, there is no provision for asylum seekers to access their legal documents on file with the Office of the Refugee Commissioner. This means that challenging a decision on appeal is difficult, particularly in the majority of cases, in which the reasons for an appeal are not sufficiently explained (Hammarberg 2011: 13).

The likelihood of success of women’s asylum claims is hampered by the process used by the Office of the Refugee Commissioner in Malta. Protection interviews are conducted in ways that are not conducive to unearthing women’s narratives of persecution. As one woman told the JRS, her interview was conducted with ‘yes and no questions and answers’ (JRS 2008: 23); she felt that she had not been able to communicate her experiences, and subsequently her claim was rejected. Upon appeal she was granted refugee status after the JRS intervened. In another study, the JRS found that applicants were poorly informed of the process and what was going to occur, further reducing the chance of a successful outcome for women making claims for refugee status.

‘DOUBLE REJECTS’

Applicants for asylum who are unsuccessful both in the first instance and later on appeal face a very difficult future. Termed ‘double rejects’, those refused humanitarian protection in Malta have no work rights and live precariously on 80 Euros per month. These people are ‘stuck’, not able to leave Malta or return to their country of origin. The participants interviewed described this situation as precarious and immobilising:

When you have rejected status you can’t move. You have no money for living, you can’t move to other parts of Europe. (Nadifa)

Despite increasing efforts to fund multilateral agreements with more countries of origin, diplomatic relations between Malta and most of the countries of origin of ‘double rejects’ are often non-existent. Readmission agreements, although a focus of EU policy, are in practice difficult to put into effect. Deportation is an option for the government but, again, relations need to
be established with the country of origin. Deportation has occurred in the past with the assistance of EU funding (LE 1). The Assisted Voluntary Return (AVR) program operated by the IOM is also an option, but few migrants take up this opportunity. Of the 148 people who took up AVR in 2009, 10 were female and three of those were under the age of nine so can be presumed to have been accompanied minors. ‘Stuck’ in Malta without work rights and a regular allowance, women are driven into the informal economy and exposed to exploitation and risk.

According to non-government statistics, and in line with observations made by NGO participants in this study, the number of people receiving THP has increased in recent years (NSO 2011; NGO 1; NGO 2). The reasons for this increase are thought to be linked to the government’s inability to send people back to their countries of origin.

My impression is that the people getting humanitarian protection is widening now. I think that is because in order not to leave many people as stuck, and to promote integration. (NGO 1)

Living in Malta on 80 Euros per month is being recognised as not conducive to ‘integration’, as this NGO participant describes. One female participant, Nadifa, had ‘double rejected’ status and regularly visited the Office of the Refugee Commissioner to argue her case. She was confident that she would be one of those given status after waiting for two years as a ‘double reject’. In that time she had had to rely on charities to supplement her 80 Euro per month income.

A woman being ‘stuck’ is particularly problematic. Not only does it create the conditions that drive women into the informal economy to meet subsistence needs, but it is likely to have wider implications. For women who are primary caregivers, children may also be affected by a single mother’s precarious legal status. A compromised standard of living is likely to extend to others. It may also make women dependent on male partners for financial support. Furthermore, these kinds of pressures have been recognised as stressors and factors that contribute to the incidence of domestic violence (JRS 2009). The legal and administrative sphere of life in Malta punishes women through enacting borders that inhibit their ability to enjoy refugee protection. For their ‘crimes of arrival’ women are detained and upon release face compromised legal protections. The next section will look at punishment in the social context of life in Malta – specifically in relation to accommodation, social exclusion and healthcare.

SOCIAL

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 had a cheque from the government for six months. Lamlya had been sent back to Malta due to the Dublin II Regulation. She had been in Sweden and said conditions in Sweden were much better. It
is much better for school. She said even Holland is good and so is Greece. Malta is not good. *Field notes (2 February 2011)*

Research has shown that adequate reception conditions are vital for countering marginalisation and stress in the post-migration context (Bujis 1993 in Bloch et al. 2000; Silove, Sinnerbrink, & Field 1997). This is reflected in EU law through the enactment of Reception Regulations, which list the resources to be made available to asylum seekers upon arrival in a Member State. In particular, the Preamble to the Regulations states:

> Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down (7).

The lived account of reception contrasts sharply with the legislation and its stated intent, as Lamlya and many other participants from this study confirmed. For female transnational migrant subjects who arrive in Malta, punishment is manifested in the social sphere, in three key areas: accommodation, social exclusion and healthcare.

### ACCOMMODATION

One of the most common topics raised by the participants was the nature and conditions of their accommodation in Malta. Housing is recognised as an important aspect of health and wellbeing for refugee populations (Silove & Steel 1997). The participants spoke of overcrowded and remote accommodation options that made work, childcare and maintaining a sense of wellbeing difficult, and compounded isolation.

Upon release from detention, transnational migrant subjects have to arrange their own accommodation. All of the participants in this study lived in an Open Centre, which are subsidised residences run by government or non-government operators, as do the majority of the migrant population in Malta (NSO 2011). The statistics point to a reliance on this kind of subsidised accommodation. Government statistics from 2010 show that 16 per cent of migrants live outside Open Centres in private accommodation, a gender breakdown of whom is unavailable (NSO 2011). The women participants in this study saw private accommodation as beyond their reach for financial reasons, and only an option for those in high-earning regular employment and those without family:

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15 In particular see Regulation 11(2) of the Reception Regulations, which states that ‘material reception conditions shall be such as to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence; the authorities referred to in sub regulation (1) shall moreover ensure that that standard of living is met in the specific situation of persons who have special needs’.

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There are a few people who live in the community and they are those that work. Other people who work as well, they don’t earn a lot of money and they might have to live with kids so they will live in Hal-Far. (Kiev)

Kiev had three children in Malta, two of which were attending primary school and the other was only 2 years-old. Most days she looked after her youngest child while her husband worked. Her husband worked in various jobs in farming or construction. The income was unreliable and as a result they could not afford to live outside an Open Centre in a private rental.

A lack of regular employment options narrowed accommodation options for transnational migrant subjects. Most of the women interviewed in this study worked in the hospitality industry. Malta’s economy is based on services, a sector that accounts for around 70 per cent of Gross Domestic Product (GDP) (Blake, Sinclair, Sugiyarto, & DeHaan 2003). Within this sector, tourism is a vital industry, accounting for around one quarter of Malta’s GDP (WTTC 2011). Access to private accommodation is gendered; those women who are primary caregivers, or who might be seasonally employed, are unable to access private accommodation in Malta. Gendered conditions of employment are therefore a factor that truncates accommodation options for women.

Open Centres were established in Malta to meet the demand for accommodation that arose when those granted humanitarian protection were released from detention. There are seven Open Centres run by the Maltese Government through AWAS, and three others that are run by non-government organisations. Migrants residing in Open Centres fall into several categories: those who have had their asylum claims approved; those released from detention after 12 months who have not yet had their asylum claim decided; and those who have been released after 18 months of detention, the maximum allowable under Maltese law. The Open Centres are structured to be temporary: people are required to sign a contract with the agency that runs the centre when they move in, which stipulates that they are entitled to accommodation for a maximum of six months. At the expiry of six months, accommodation and their allowance is meant to cease (Vassallo & Gauci 2009/2010). This has obvious implications for those unable to secure other accommodation.

NGO participants reported that Open Centres, like detention centres, were established on an ad hoc basis. As one NGO participant interviewed said, ‘we had no blue print for Open Centres’ (NGO 1). Another NGO participant explained that resentment towards the migrant population in Malta narrowed options for locating the centres:

There were many protests when they were trying to build Open Centres in residential areas. They were unpopular because residents were worried that their land values would go down. (NGO 2)
Often housing and accommodation for refugees is concentrated in deprived areas that provide insufficient access to support services (Harrell-Bond 2002: 181). With resistance to building Open Centres in residential areas so strong, many of the Open Centres came to be built in the same remote area of Hal-Far, which also housed the only Open Centre specifically built for women.

Malta’s refugee population is clustered in Hal-Far, a part of Malta that conforms to Bauman’s (2004) imagery of a ‘wasteland’. Hal-Far is a former military area located about 40 minutes by bus from the capital, Valetta. Clustered in Hal-Far are four government-run Open Centres and one NGO Open Centre, housing over a thousand transnational migrant subjects consisting of both adult men and women. Demonstrating the reliance placed on this form of subsidised accommodation in Malta, a staggering 76 per cent of all transnational migrant subjects live in Hal-Far. Hal-Far is also home to Lyster Detention Centre. The closest village to Hal-Far is 3 km away (JRS 2008: 44). The women participants complained of the lack of shops and limited public transport, with only one bus serving the area and no public transport at night, making access to employment challenging. The participants found living in Hal-Far created many problems:

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. (Nadifa)

Having so many migrants in the one area, as Nadifa describes above, does provide some opportunity for social interaction, but overall isolation weighs heavily. Moreover, there are gendered dimensions to this structure of accommodation provision. The actual conditions of accommodation contributed to a sense of despondency.

**HAL-FAR WOMEN’S IMMIGRATION RECEPTION CENTRE**

A former detention centre, the Hal-Far Women’s Immigration Reception Centre (HFIRC) is an Open Centre that closely resembles its former purpose. It is surrounded by a huge fence. When I visited there were gated doors that separated the rooms and corridors within the building. The buildings themselves looked run-down and dirty, and the furniture was stained with rubbish scattered on the floor. My immediate impression of the women residents was that they appeared drawn, unhappy and unhealthy. The interviews with refugee women residing at the HFIRC revealed that it was always overcrowded, with a rapidly expanding and contracting population:

We are always full. A month ago when they counted there were 118 people. This is our maximum. Every day though, people leave. They get protection, apply for their travel documents and leave. Two or three people per day would leave. (Aziza)

This suggests the transitory nature of the resident population. Aziza estimates the rate of departures at two or three people per day. This high turnover made maintaining conditions in the
The women interviewed were eager to raise the topic of their accommodation at the HFIRC. Chief among their concerns was the overcrowding and lack of facilities to support the number of people living there:

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. (Syrad)

Hal-Far is really bad. One room like this [points to a room with four beds in it and a few wardrobes] and there is 16 people. (Lamlya)

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, and they have locked the kitchen. So we go to bed hungry because they have closed the kitchen. (Nadifa)

The conditions make it difficult to fulfil basic needs like sleeping and eating. The participants also said that overcrowding meant sometimes having to share bunk beds with children. Hanan described the bunk beds as unsafe, her child having to share her bed and sleep raised from the ground at a tall and dangerous height. She was afraid her child would fall from the bunk. The women participants also said that the lack of facilities meant people had to compete for access to resources. Many women were of the view that ‘there are too many women coming to Malta’. Four participants expressed their view that the battle for adequate space within these centres and for access to facilities like kitchens led to conflict between women. Forced to compete for resources, the participants said they resented other women coming to Malta and arriving at the HFIRC.

The isolation induced by the location of the Open Centre and the conditions within it led many participants to liken the Open Centre to a detention centre. This was reinforced by strict visitor conditions that meant visitors had to obtain permission from AWAS before they could enter the HFIRC:

Nobody can visit here. This is like detention. No-one can come and visit us here. (Pia)

The sense of institutionalisation created by conditions in the detention centres extended to people’s experiences of the Open Centres. The participants felt as if they were still in detention even though technically they were able to come and go. This can be seen as one result of the ‘enforcement rituals’ embedded within Malta’s refugee protection system (De Genova 2005); the gaze of border security and control continues even once transnational migrant subjects have been released into the community.
Prior to 2008, when the HFIRC was opened, women were housed in the same Open Centres as men. As one woman participant described, this involved being accommodated in a tent village with men:

I come from Somalia and I arrived in Malta one year and a half ago, September 2007. I have been at HFIRC since March 2008. This centre has been open since February 2008. Before that single women were kept at the Hal-Far tent village along with men. This was bad for women. Now there is the Family Centre across the road, the Hangar and the ‘tent village’ for men. Sena

The ‘tent village’ is literally a series of tents formerly used to house both men and women, but which now only accommodates men. In previous studies, women have described the tents as very unsafe, particularly at night (JRS 2009). Tents fail to provide adequate security and women complained that men entered their tents at night. Use of the bathroom required crossing an inadequately monitored and poorly lit compound. Women have described how they coped with this high demand for the common bathroom facilities by waiting for the men to finish (JRS 2009).

Since the recent increase in arrivals in Malta following the conflict in Libya, the Maltese authorities have re-opened the Hangar, a facility converted to house transnational migrant subjects, that had been closed due to its substandard condition. As facilities in the women’s Open Centre have been at and above capacity, women have again had to be housed in the Hangar. There is research suggesting that women feel unsafe and exposed in this accommodation (Hammarberg 2011: 8):

A female migrant stated that she avoided using the toilets at night as she felt unsafe covering the considerable distance between them and the container were she was accommodated. (Hammarberg 2011: 8)

The growing pressure on the Open Centres in Malta since the conflict in Libya has had a gendered impact. Women are forced to live in cramped conditions and return to non-gender-segregated accommodation, which increases their exposure to harm and risk.

**SIGNING IN FOR SUPPORT**

Another of Malta’s ‘enforcement rituals’ consists of requiring transnational migrant subjects to sign in to receive their allowance and accommodation. Migrants only receive a welfare allowance of 130 Euros monthly (80 Euros if they are rejected or they are Dublin II returnees) if they reside in an Open Centre. This allowance and accommodation in an Open Centre is restricted to six months and is only made available to people who sign in three times per week. If someone fails to sign in for three weeks they will be evicted (Vassallo & Gauci 2009/2010). Moreover, if someone begins employment they will stop receiving the government benefit, and will lose their
place in government-supported accommodation if they do not continue to sign in. The women participants saw this as a disincentive to find and maintain employment. It also drove people into the informal economy where their earnings are not reported. One participant saw this situation as a double bind:

If I don’t work, I don’t have to pay for this bed. I work so I have to pay for this bed. To do so you have to sign in three times a week. If I don’t sign in, I get no money – it’s ridiculous! The times I have to sign in clash with my work and make it too hard to keep working. (Pia)

Pia sought to manage a job in a hotel where she worked six days a week. She sent money back to her family in Somalia. She found the accommodation system unfair. This policy of securitisation undermines people’s agency in finding employment and living independently. It works to punish people who work by taking away their accommodation. Problematically, their benefits will also be cut off forever, as there is no provision for benefits to be reinstated if people lose their job. Given the seasonal nature of the work available in Malta there is more of an incentive for people to explore the black market for employment and to not declare their earnings.

**HEALTH – A PUNISHING SPIRAL**

Medically speaking, upon arrival people are in good health. They may have some issues as a result of the trip but generally, when they enter detention they are very strong. Then other pathologies develop like respiratory problems etc. Those in the tents have double the amount of issues as the others. These are the sorts of issues that arise from having poor shelter. For some of these tents it is actually raining inside. They have holes inside them and they leak. (NGO 1)

Transnational migrant subjects generally arrive in Malta in good health, as indicated by the NGO participant quoted above. Conditions in detention and in Open Centres contribute to their deteriorating health as they continue to reside in Malta.

Living conditions and an uncertain future were seen as the major contributors to mental illness among transnational migrant subjects in Malta. The participants in this study observed that mental illness was more likely to occur the longer people remained in Malta:

Even though they have been through traumatic experiences, life in Malta and living conditions here are the major source of frustration. In the 0–3 month stage of arriving in Malta, 3 per cent of primary complaints are about mental health. In the 3–6 month period, this rises to 5 per cent. After six months, this becomes 10 per cent. This is very important data that proves the impact of detention centres on mental health. (NGO 2)
The women participants reported having expectations of the EU as a place of safety, where they could bring their families. Unmet expectations alongside poor reception conditions in Malta made life particularly challenging:

When people arrive in Malta they think they have arrived in the European Union and everything is going to be fine. They are put into detention for long periods of time, sometimes 12 months. They are released into Open Centres probably in Hal-Far, where all the Open Centres are across the road from one another. They live on 4 Euros per day and that is all that is given to them. There is a lack of hope, there is uncertainty, there is anxiety, they miss their families. They don’t know how long they are going to stay here, they want resettlement to the US but this program will finish in 2012, what happens if they don’t get accepted to that program? (NGO 1)

The women transnational migrant subjects interviewed discussed their plans to travel to other places in the EU or the US; none wanted or were planning to settle in Malta. The result became a suspended transience, a holding pattern in which the likelihood of mental illness grew and living conditions worsened.

The inaccessibility of legal protection and the impact of this on future stability, including access to family reunification, has major consequences for refugee women. The refugee women interviewed talked of a persistent feeling of being ‘stuck’ – unable to move out of Malta and unable to return to Somalia. This was particularly the case for those with ‘double reject’ status:

I am Somali but they don’t believe me. I don’t know why. I don’t know what I will do in the future. I don’t have a future. I am in a worse situation now than in Somalia. (Dina)

Uncertain legal protection and an inability to access or plan for future relocation options contributes to anxiety for refugee women; and the precarious legal status of refugee women affects their overall outlook for the future and contains them within Malta. Dina felt she was better off in war ravaged Somalia than a Member State of the EU.

The impact on mental health of the conditions in detention and Open Centres is gradually being recognised by the government, but action is slow to materialise and when it does is inappropriate. In a report in 2008, the Maltese Government expressed its view that mental illness was not a problem:

There are no reports of immigrants suffering from mental health problems, except those cases that would be expected to be found within a community of 1400 immigrants. (ECRI 2008: 51)
In contrast, the law enforcement participants in this study acknowledged that mental health is an issue in this population, yet presented the problem as one that reflects a lack of resources – thus giving the impression that the Maltese Government has its hands tied:

I think one of the greater challenges we are seeing now is in the area of mental health. The situation is more serious now than a couple of years ago. I think this is a change from 2009 onwards. We can link to mainstream services but how deeply do we intervene? We do not have the skills or resources to do so. We need to train people as people don’t know how to deal with this situation. We also need to develop inter-cultural competencies. (LE 1)

This statement reveals the differentiated treatment of transnational migrant subjects and the majority Maltese population. There is a reluctance to provide healthcare to migrants through ‘mainstream services’, supposedly as a result of a lack of resources. The impact is that either asylum seekers are simply not treated, or they are treated by alternate healthcare systems that are reliant upon the good will of non-government organisations. This law enforcement participant said that there had been ‘three to four suicides in the last six years, all of whom had been male’. If the situation is now deteriorating as described by the law enforcement and NGO participants, instances of suicide may increase.

Insights regarding the prevalence of mental health issues were not being matched by a softening of securitisation of migration policy, but rather a desire to pursue ‘repatriation procedures’:

We have tried to become part of Europe’s repatriation procedures. This has a big impact on services and on the users. When this fails it has a bit impact on their mental health; they feel they are stuck again. (LE 1)

The terminology ‘users’ and ‘services’ demonstrates how the government perceives transnational migrant subjects as clients, within a client–service relationship. This paradigm is one dominated by the primacy of a consumer culture and not a humanitarian one. It implies that ‘users’ willingly access and pay for services rendered, rather than using those they are entitled to or need. The policy response presents repatriation to the country of origin of transnational migrants, from where they have often gone to great lengths to flee, as a solution to immobilisation.

GENDER-SPECIFIC HEALTH ISSUES FOR WOMEN

The NGO and law enforcement participants highlighted several health issues for women, in addition to the mental health concerns outlined above. Many of these relate to childbirth and pregnancy, and result from the high prevalence of female circumcision among Somali women. An NGO participant with medical experience working with migrant women in Malta estimated that 95 per cent of Somali women had had the procedure. Female genital mutilation, or FGM as it is
also known, entails ‘all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons’ (WHO 2008a). Female circumcision presents specific issues for health providers in Malta:

The term ‘female genital mutilation’ is difficult. I try not to use it but even I use it sometimes by mistake. We don’t want to be judgmental and use the term female genital ‘mutilation’. So we say ‘female circumcision’. We talk about symptoms. This is not always easy. Female circumcision is an issue for pregnancy in terms of delivery. Women do not want a caesarean, as in Somalia women die from a caesarean. Gynaecologists here are not aware of these issues. We try to deliver training on that to raise awareness etc. We also organise counselling for women’s reactions so that they can talk through options with the hospital. (NGO 2)

This narrative indicates that refugee women face cross-cultural communication issues in hospital. These gender-specific health issues experienced by Somali women place unique demands on the Maltese health system that require adequate resourcing. The NGO participant cited above was working to build understanding among medical professionals, and there does appear to be movement on this front. Concern around the lack of breastfeeding among the migrant population was also raised by a law enforcement participant, who thought that this was a matter of access to health education (LE 1). Isolated from networks and communities, it is easy to see how health issues can manifest for transnational migrant subjects. Refugee women are exposed to gender-specific healthcare issues that necessitate adequate resourcing and can only be exacerbated by their conditions of confinement.

The law enforcement participants characterised the increase in the number of women giving birth on Malta as problematic, and expressed the view that health education around pregnancy and childbirth should be targeted at refugee women. They understood that the increase in pregnancies among refugee women as something that could be addressed through improved family planning and education:

The main health issues are we try and get the health professionals to work with people on sexual and reproductive health. This is because we have seen that the number of families increase dramatically while people are here. This causes problems of poverty, education and we try to run courses and sessions on this.

For the Maltese authorities, women who give birth are characterised as of concern. Given the government’s dislike of the ‘burden’ of resourcing migrant populations in Malta, it is possible to understand their attempts to prevent women from reproducing as a personalised border imposed by the authorities in Malta upon women. The unspoken agenda that may be observed in this
argument is that the government does not want female transnational migrant subjects, many of whom are black, poor and in receipt of government allowances, to reproduce.

The women in this study were affected by the lack of adequate healthcare and related resources in Malta, which contributes to poor mental health. They are placed in a health system that is unable to meet their needs adequately and healthcare centres are not accessible to migrant populations. The lack of hygienic accommodation facilities and the instability plaguing refugee determination processes create conditions that facilitate the erosion of the health of transnational migrant subjects who arrive in Malta.

**SOCIAL EXCLUSION**

Racism is a real consequence of policies that target transnational migrant subjects as a population that is dangerous and a threat (Cohen 2003; Khosravi 2010); and for asylum seekers it exacerbates the sense of vulnerability. Boat arrivals are dealt with in ways that are hostile, and this attitude has permeated the media and the general public:

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. 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. (NGO 1)

The 2009 European Union Minorities and Discrimination Survey found that Malta was the country in which Sub-Saharan Africans reported the highest incidence of perceived discrimination (Vassallo & Gauci 2009/2010). Sixty-six per cent of interviewees said they had experienced discrimination in the 12 months leading up to the survey. Just over half felt that discrimination in Malta was widespread. Of the Muslim participants, 64 per cent reported discrimination, although most attributed this to colour of their skin rather than their religion (Vassallo & Gauci 2009/2010). Of the total number of participants in the study, 93 per cent were unaware of the organisation in Malta that is responsible for handling complaints of discrimination. Indeed, filing a complaint to official organisations was described as ‘futile’ by 75 per cent of those surveyed. Transnational migrant subjects experience racism and discrimination, but make decisions not to report because of perceptions that official bodies will not respond.
The participants in the present study reported their experiences of racism in Malta. Racism was felt by one refugee woman interviewed to be a common experience:

The people are racist. I have been to other European cities and they are not as racist as here. In work, religion, family and on the bus. If I sit next to a Maltese person on the bus they will insult me and start swearing. Not all Maltese people but most are racist. (Blota)

As this statement indicates, other European cities were understood by participants to be not as racist as Malta. Public transport was the site of a number of instances of racism, according to the refugee women. During my time in Malta I observed differential treatment by bus drivers towards sub-Saharan Africans. In several instances I saw the bus driver fail to stop for Sub-Saharan Africans who hailed the bus.

In late October 2010, an article appeared in the *Times of Malta* about an incident involving a bus driver and an ‘African’ family (Peregin 2010). The ‘African’ family boarded the bus only to be told by the driver that they must disembark because they had a baby and a pushchair with them. Not understanding the driver, the family made their way onto the bus. The man went to pay for the fare with a 5 Euro note and was admonished by the driver who was said to have ‘slammed’ the change into his hand. The driver reportedly continued shouting at the man and told him to stand for another passenger, but the passenger declined the seat. The driver then hit the pushchair and then started pushing the man to the back of the bus. Another Maltese passenger intervened and the driver and the passenger filed separate reports at the police station.

Racism was understood by the law enforcement participants interviewed for this study as not having a notable impact on crime rates. One law enforcement participant said that there was no significant increase in crime rates, nor in rates of victimisation:

I would say that crime is not an issue with the migrant population. We don’t get any higher crime rates with them here. Equally we don’t get high victim rates either. There are some racist crimes, but generally no rise in crime. (LE 1)

Other reports, however, have challenged this view. A recent 2009 European Union Minorities and Discrimination Survey (EU Midis) found that racist violence was a real threat to Africans in Malta (Vassallo & Gauci 2009/2010). The report’s authors conducted a survey among Africans in Malta and found that around one-third felt they were likely to be victims of crime and one-third had been victims of crime. Physical violence was involved in half of those reported incidents of crime and most were accompanied by verbal abuse. Harassment was reported by 26 per cent of the participants and in 99 per cent of these cases, racial or ethnic motivations were responsible. This highlights a lack of understanding among Maltese law enforcement authorities and a failure in the reporting of racist violence. The latter point is confirmed by the EU Midis report, which
showed that over half the racially motivated physical assaults had not been reported to the police.

Transnational migrant subjects have not been the only ones punished: Malta has experienced crimes against NGO representatives who have worked with and on behalf of the migrant population in Malta. There have also been a number of violent attacks against refugee advocates. Seven cars belonging to employees of the JRS were torched (Kroeger 2007), and the principal lawyer for the service had her front door set alight by arsonists (UNHCR 2007a). The NGO participants in this study also found that it was difficult to find employees for programs for transnational migrant subjects in Malta, even when they offered wages that were above the market rates (NGO 2).

Research with migrants residing in two large cities in Arizona by McDowell and Wonders (2009) sought to make an empirical contribution to our understanding of how technologies of control shape migrants’ use of public space. They conducted focus groups with migrant women, the majority of whom identified Mexico as their country of origin. Half of the women had lived in the US for over five years and most of the participants said they were undocumented. The authors also conducted interviews with staff from two NGOs that delivered social services to migrant populations. In McDowell and Wonders’s (2009) study, participants were asked to provide their first impressions of the words ‘border’, ‘racial profiling’, ‘freedom’, and ‘immigration’. The name of a County Sheriff, Joe Arapaio, featured prominently in their responses to each word. For participants, this sheriff represented immigration enforcement and harassment, or what McDowell and Wonders describe as a ‘disciplinary force in the lives of migrants’. The participants in the present study, when talking about the challenges they faced in Malta, associated such challenges with ‘the Maltese’. Most participants expressed the view that ‘the Maltese’ were responsible for their confinement, punishment, lack of jobs and the racism which meant they could not even safely board a bus. This was contrasted to the perceived generosity of conditions in other countries in Europe. Indeed, the sharp contrast between the conditions in Malta and those in other EU Member States was raised by six other participants in this study.

In his report, Thomas Hammarberg called upon the government and the media in Malta to present a positive view of immigration:

> It is particularly important that the Maltese authorities contribute to the public debate on immigration in a manner that fully reflects the importance of human rights and human dignity. It is also crucial that the media ensure that the material they publish does not contribute to creating an atmosphere of hostility, intolerance, and rejection towards migrants present in Malta. (Hammarberg 2011: 4)
He also recommended a public information strategy and the strengthening of anti-racism measures. Hammarberg’s report followed a Resolution by the Parliamentary Assembly of the Council of Europe that Malta take specific steps to address racism and xenophobia (COE 2008a), as well as similar reports from the ECRI (ECRI 2008).

SOCIAL EXCLUSION FOR SOMALI WOMEN

There was an acceptance by law enforcement and NGO participants in this study that Somali women were the most vulnerable of all migrant populations in Malta (NGO 1 and LE 2). Somali women were specifically singled out by the participants as having poor prospects of integration, and this was not limited to Malta:

Women from Somalia were perceived as the most vulnerable: women are more vulnerable than men. Somali women are the most vulnerable. Their integration prospects I would say are pretty bleak. And this is integration abroad or in Malta. (LE 1)

The participants explained that Somali women often spoke little English and were illiterate as a result of the protracted conflict in Somalia and the lack of access to education. Despite this acknowledgement, these women were criticised for being ‘welfare-dependent’ and not being able to make the most of their networks as ‘others’ do:

For women, education, employment and being single mothers are the issue. There is the problem of not having day care centres. Others find a way around this but Somali women tend not to. We are trying to get people to not be dependent on welfare and the money the government gives them. This is better for them and it is better for the government. But it is difficult to do. We had one project for example that was terminated. This project was a cooperative project with another NGO in Malta and basically the women decided that they preferred to get the government allowance and did not want to participate. (LE 1)

Here, Somali women are being blamed for the specific structural impediments they face in Malta. Yet the Somali participants talked about establishing private childcare arrangements to get around the lack of day care centres. Many were also gainfully employed. It is not clear why this particular project referred to by the law enforcement participant had failed. However, one of the NGO participants in this study said it was extremely difficult to get women to participate in programs because of the high number who leave to go elsewhere in the EU during the course of a program. These poor rates of attendance in projects also appeared to be the result of health-related issues – ‘women would not leave their rooms and slept all day. They seemed withdrawn and depressed’ (NGO 2).
The transnational migrant women participants in this study talked about the gendered obstacles in Malta which prevented asylum seekers from securing employment. For refugee women, the most significant of these was a lack of childcare, discrimination in employment, a lack of skills and access to training. These problems were compounded by the hierarchy of assistance that prevents people on subsidiary protection and THP from gaining access to the same benefits as those people with refugee status. The implication here is that Somali women are problematised as lazy and welfare dependent. The system creates a situation where they are welfare dependent, and then chastises these women for not being self-reliant – which could be seen as a reflection of neoliberal techniques aimed at reducing dependency (Fraser & Gordon 1994). This system thus results in women refugees being blamed for specific structural impediments and fails to provide the resources required to meet the perceived needs of education, training and support, which in turn would address women’s vulnerability.

**ECONOMIC**

Punishment for ‘crimes of arrival’ implicitly shapes the economic aspects of life on Malta for transnational migrant subjects. This section charts some of the structural challenges faced by migrant women in employment in Malta, which reveal the impact of the securitisation of migration on refugee women’s experiences. Notions of an ‘ever-present vulnerability’ (De Genova 2005: 246-248) are reinforced chiefly by the limited access to employment opportunity and the conditions of that employment, with specific gendered implications for women. Often separated from significant male others, women’s survival is dependent on access to paid work. Many participants in this study were also supporting the livelihoods of others in Somalia or in the neighbouring region through remittances:

> My family in Somalia are always asking me for money. They think that because I am in Europe I must be making money. They don’t know the situation here in Malta. I can’t send money back I don’t have. (Kief)

Upon arrival, all transnational migrant subjects are detained. The opportunity for women to earn an income is therefore only possible once they are released from detention. The women interviewed in this study expressed their frustration at the lack of access to jobs in Malta:

> Here we cannot work, it is difficult for women. There are no cleaning jobs. (Lamlya)

> Malta is bad, there are no jobs! (Nina)

The participants in this study spoke about some of the structural impediments that prevent women from gaining employment and contribute to precarious conditions of employment in both the regular and irregular labour markets.
Legal status has a significant influence on one’s access to employment. All transnational migrant subjects who wish to work in Malta require an employment licence, except for those with refugee status. This is a form of internal border control (Bigo 2005) and another ‘enforcement ritual’ (De Genova 2005: 246-248). Importantly, there is a hierarchy of rights attached to one’s legal status. Those with humanitarian protection can apply for licences themselves, whereas asylum seekers or rejected asylum seekers must find an employer who is willing to apply on their behalf (LE 1). Asylum seekers who have been rejected twice cannot renew their employment licence (Sammut 2009). This thus removes access to employment for people with ‘double reject’ status, funnelling them into the irregular economy.

The dispensing of diluted forms of humanitarian protection therefore has an impact on employment conditions and can channel those without legal status into roles in which they are vulnerable to exploitation. The participants in this study were acutely aware of the problems that could arise were they to work without papers:

If you have a work permit you can get money. If you don’t have a work permit they can stop giving you your money. So even if you work, you won’t get paid. Any time they can report you because you don’t have any identification. (Nadifa)

The women participants were concerned that their employers would not pay them or would report them to the authorities. It was not possible to identify the extent of the informal economy in Malta from this research, but NGO participants understood that it was a key part of the economy.

The women interviewed reported a lack of work opportunities in Malta and criticised their conditions of employment. Even those with recognised legal status face discrimination in the workplace and are unable to enforce their rights. One woman participant 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. (Sena)

Even though a migrant may be legally recognised as entitled to work, ‘cultural identity’ – a key theme of Huysmans’s (2006) securitisation of migration – infiltrates employment conditions. For Huysmans, the preservation of cultural identity is a key theme fuelling the securitisation of migration. Sena’s experience reflects securitisation from below: although not official government policy, notions of cultural identity inform the decisions of employers as to who will receive offers of continuing employment and associated conditions. In Sena’s experience, she was judged as not entitled to a permanent full-time contract as a result of her ‘migrant’ status, and not accorded
the same treatment as her Maltese colleagues in the same position. As a result, Sena was left to maintain her casual employment with access to fewer entitlements such as sick pay, holiday leave etc. Despite being legally entitled to work, women’s experiences of employment demonstrate how they are subject to a lesser standard of rights and conditions in the workplace in the Maltese context.

Income streams for transnational migrant subjects were unreliable as a result of the limited work opportunities and the seasonal availability of work on Malta. One NGO participant reported that the racism of employers was also a significant barrier to migrants finding work in Malta (NGO 1). With formal and higher skilled employment offering very limited opportunities for transnational migrant subjects, Malta’s agricultural and service sector economy was particularly absorbent of migrant labour. Government figures show that the major employer for migrant women in Malta is the tourism industry, offering jobs as cleaners, housekeepers, kitchen hands and room attendants (ETC 2011). The participants in this study were mainly working in the tourism industry and in the area of service provision to migrant populations in Malta. The types of industries in which migrant men find employment are construction and agriculture, in addition to the tourism industry.

The tourism industry is a key employer for migrant women. Two of the women interviewed were working in the tourism industry at the time, for six days per week. This was seen as bringing in about 600 Euros per month and as a good way to practise and learn English.

I’m not working today. I work in hotel sometimes six days a week, today is my day off. (Pia)

From April, everyone is working. The hotels would come to the centre and they would get staff to go and work. But now, this is not happening as summer has ended, there are no cleaning jobs. (Asha)

This work is characterised by high demand around peak tourist season in the Maltese summer. As summer comes to a close, however, this work dries up and the women are without an income and reliant on the small allowance provided by the government.

The migrant women faced specific barriers in their employment as a result of their gender and racial background. The participants consistently reported that employers wanted women cleaners who did not wear the hijab. Employers from hotels would contact the asylum seeker accommodation centres directly to find potential employees. I witnessed the following interaction between an employer from a hotel and two female transnational migrant subjects 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].

The securitisation of migration renders those from a different racial or social group as dangerous and a threat in the eyes of the majority. Somali women’s headscarfs are a visible sign of their Muslim religious identity. In order to gain employment as a cleaner in Malta, employers frequently demand that this clothing item not be worn, as it is deemed unacceptable in the workplace. This narrative indicates that there are key conditions imposed on women’s employment that require them to conform to the demands of a less visible religious group in order to be employed – a clear manifestation of securitisation at work in the employment sphere.

The lack of access to childcare is another barrier that prevented women from gaining suitable employment. As previously outlined, there are a large number of single mothers in the transnational migrant population community in Malta. Many women have experienced sexual violence en route to Malta and sometimes arrive pregnant. There are also a large number of women getting pregnant in detention and Open Centres. The absence of childcare makes it difficult for primary caregivers to find employment in an already small market:

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)

School hours in Malta are also an impediment to working in the hospitality industry for women. The NGO participants reported that the lack of access to rights in the workplace means that migrant women are unlikely to enjoy flexible working conditions to enable them to navigate the challenges presented by working and having children in childcare: ‘Who is prepared to give an illegal immigrant a special concession, say come in from this time to this time and bring your child in, I don’t know. I think it is difficult for them’ (NGO 2). Women made their own arrangements for childcare at considerable expense, or with other women in the Open Centres:

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)
Women demonstrate their agency in circumventing the lack of access to childcare in Malta which was an impediment to their participation in the workplace. With diminished rights in the workplace, women transnational migrant subjects are in a difficult position to be able to negotiate flexibility with an employer.

Barriers to employment in the formal sector drive women to seek out work in the informal market. None of the participants in this research said that they were undertaking sex work, but this type of work was discussed by both of the NGO participants interviewed, who said they were aware of women having been engaged in sex work:

The Nigerian and Eritrean women are involved in prostitution. They go out and are never seen again. Here we have prostitution areas. In Birkekara it is Nigerian women. (NGO 2)

In some contexts, sex work has been shown to provide women with a high degree of flexibility and financial independence (Pickering, Maher, & Gerard 2009). As an illegal occupation in Malta, sex work is not regulated, which poses particular challenges for women. The above statement also suggests that women are participating in street work, which poses additional potential safety risks for women (Weitzer 2009). Another NGO participant said that some women offer sexual services from their homes in exchange for financial support:

There are some women who run a kind of prostitution business from home whereby they provide sexual services to different men in order to maintain their keep. It is like a kind of polygamy, I don’t know. But it is how they can get money to maintain their house and get by. (NGO 1)

Whether it is a polygamous or a commercial relationship, the nature of this exchange suggests that the structural barriers to employment in the formal sector faced by women increase women’s dependency on employment in the informal market and on men as financial providers.

**CONCLUSION**

Upon arriving in Malta, transnational migrant subjects are punished in the legal and administrative, social and economic spheres for their ‘crimes of arrival’. The securitisation of migration infiltrates these separate spheres of life through official policy and also from below. The gendered impact for women results in inadequate healthcare, isolation and marginalisation, poor accommodation, heightened exposure to violence, forced pregnancy, exposure to informal economies that offer fewer rights, and inadequate childcare. The border is not only crossed at the point of entry, but is enforced through employment opportunities and conditions, and deteriorating health and wellbeing. Transnational migrant subjects have to negotiate community perceptions that are influenced by securitisation discourses which portray them as hailing from
dangerous and threatening racial and social groups. This results in diminished standards of living and basic rights for asylum seekers.

The use of public space by migrant women is gaining significant focus within the literature on gender and migration (Inda 2007; McDowell 2009; De Genova 2005). This chapter has shown that migrants’ rarely get the opportunity to occupy public space. In Malta, transnational migrant subjects are generally confined in detention, or placed in Open Centres that constitute a form of detention. The women participants did not describe the limitations imposed on their use of public space, but rather the racism of the Maltese. They described living in a remote and forgotten part of Malta. Opportunities to socialise and use public space were restricted to Hal-Far, where the overwhelming majority of the migrant population was clustered.

The impact of these forms of punishment is the fostering of an excluded community that has diluted legal protections. The participants highlighted several barriers to their full participation in daily life, which made the prospect of onward migration to another Member State more appealing. Onward or secondary migration is a practice that EU Member States have sought to discourage (Düvell 2010; Oelgemöller 2010). At the same time, however, the EU is not ensuring that adequate protection exists in the countries of first asylum for those who arrive in the EU. The next chapter examines the impact of the securitisation of migration on women’s onward migration from Malta.
CHAPTER 9: SELECTING INDIVIDUALS FOR ONWARD MIGRATION - CONTAINMENT AND DEVIANCY AMPLIFICATION IN MALTA

The securitisation of migration has played a key role in transforming Malta into a borderland for transnational migrant subjects wanting to exit and migrate onwards. From Malta, a process of selective and targeted re-bordering takes place, which either propels irregular migrants on to other countries or confines them to the island, where the only option is to remain in indefinite limbo or to use extra-legal means to exit. Onward migration is defined in this thesis as mobility away from Malta, most often to other parts of the EU but also to nations outside the EU, most notably the US. This definition includes both forced and voluntary migration back to the country or region of origin. It is acknowledged that onward migration is non-linear and may also be cyclical (Düvell 2010; Oelgemöller 2010).

The experience of onward migration of the participants in this study can be characterised according to two major themes: containment and control. Containment is achieved by one of three ways: transnational migrant subjects may be 'stuck' in Malta, may leave Malta and be forcibly returned under the Dublin II Regulation, or may be driven to adopt illicit methods of exit from Malta. The second theme – control – derives from a process of protracted selection whereby individuals can be selected to leave Malta through sanctioned legal pathways. These processes of selection of individuals to take legal pathways of mobility out of Malta consist of the EU relocation program, family reunification, the US Refugee Resettlement Program, AVR and forced return through deportation (Catalfamo 2011; EC 2010; Pisani & Giustiniani 2009). Processes of containment and control have discernible gendered impacts for women, particularly those with children.

This chapter considers the impact of the securitisation of migration on these mobility pathways out of Malta. It begins by analysing the operation of the Dublin II Regulation, and proceeds to examine the operation of the EU relocation program, AVR, family reunification and the US Refugee Resettlement Program. The limited use of deportation is also discussed. This chapter concludes with an examination of extra-legal mobility in the form of smuggling and trafficking in the context of exiting Malta.

DUBLIN II REGULATION – DISRUPTING, CONTAINING AND PUNISHING IRREGULAR MIGRATION

The Dublin II Regulation operates across the EU as a hyper-mobile border. The Regulation disrupts, contains and punishes asylum seekers for irregularly arriving in Malta. The Dublin II Regulation and its predecessor, the Dublin Convention 1990, constitute key policy of the Common European Asylum System 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 (Freedman 2008: 426; Hurwitz 1999; Papadimitriou & Papageorgiou 2005). Under these arrangements, an asylum seeker is permitted to apply for asylum in only one Member State and the Dublin II Regulation stipulates how that Member State is determined (Guild 2005). Primarily, responsibility will fall to the Member State through which the asylum seeker first enters the EU. With the advent of compulsory visa schemes and carrier sanctions preventing people from using air travel to enter the EU, the Dublin II Regulation has a disproportionate impact on Member States like Malta that line the external EU border. The participants in this study left Malta for other Member States, only to be returned and punished upon re-entry, sometimes more than once. This cycle of departure, rejection and containment disrupted the women’s strategic decisions about onward migration and access to family, support, networks and refugee determination procedures in other Member States; and this cycle has acute gendered dimensions for the women participants in this study.

Dublin II drives a series of macro and micro policing practices across the EU that operate as a personalised border for asylum seekers who arrive in Malta. The implementation of the Dublin II Regulation was facilitated by the introduction into community law of a system for tracking people who arrive in the EU and apply for asylum, by taking and entering their fingerprints into a central database, known as Eurodac (de Zwaan 2006; Garlick 2006; Guild 2006; Hurwitz 1999). Since the introduction of Regulation 2725/2000, all applicants for asylum who are over 14 years of age must be fingerprinted (de Zwaan 2006; Hayes 2006). Eurodac is accessible by law enforcement officials all over the EU. Once a person makes an asylum application in any Member State, the authorities will check whether they have been fingerprinted in any other Member State. If they have, their claim will be expedited, judged as unfounded, and they will be deported to the Member State that originally received them and took their fingerprints. This occurs without a substantive consideration or review of their claim for asylum.

The exceptions to the Dublin II Regulation are narrow, and expose asylum seekers to greater vulnerabilities which impact women disproportionately. An exception will arise where the asylum applicant has a visa, residence permit or a first-degree family member with refugee status in another Member State. An exception also exists where the person has lived undetected in that Member State continuously for five months or longer. The five-month clause was adopted after lobbying by southern EU Member State, particularly Italy and Greece (Gil-Bazo 2006). Southern

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16 Council Regulation (EC) 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. Article 6,7,9.

Member States did not wish to continue to be responsible for asylum seekers where another Member State had been responsible for their illegal stay (Gil-Bazo 2006: 578). This latter scenario poses obvious risks to asylum seekers, heightening their exposure to harm and exploitation in seeking to live ‘undetected’. This is especially true for women who may be more identifiable in public spaces because of cultural and religious mores, such as the hijab worn by some Muslim women.

The principles of containment and punishment are intertwined in women’s experiences of the Dublin II Regulation, through which the EU uses the border state of Malta to indefinitely contain asylum seekers. The act of other EU Member States returning women to Malta, often repeatedly, highlights the ongoing rejection of women with legal status simply because of their original mode of arrival in Malta:

Lamlya kept pointing to the finger on her hand, the ring finger, 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 (2 February 2011)

Approximately one in five of the women interviewed for this research had been returned to Malta, some more than once, by the operation of the Dublin II Regulation. Many were as keen as Lamlya to talk about how they experienced the application of this law. Women experienced Dublin II as abruptly disrupting their onward migration and family reunification, punishing them upon their return to Malta, worsening their already challenging living conditions, and delaying the processing of their humanitarian protection applications. The Regulation forever linked them to Malta as their country of first arrival in the EU. In this respect, the law enforcement participants interviewed for this research were similarly vociferous in their criticisms of the operation of the Dublin II Regulation, although for divergent reasons. State participants felt the Regulation placed undue pressure on the resources of Member States geographically located along the external EU border, in expecting these states to address onward migration by both punishing and containing arrivals.

**DISRUPTING ONWARD MIGRATION**

18 Council Regulation (EC) No 343/2003 of 18 Feb. 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.
I went abroad for two years and just came back. I ran away. (Lota)

The women interviewees who were affected by the Dublin II Regulation 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. Their reasons for leaving Malta were several. Some had found, like Lamlya and Lota cited above, that conditions in Malta were poor, as various NGO reports on Malta have similarly found (AI 2010a; Hammarberg 2011; MdM 2007; MSF 2009b). Lamlya believed that education and healthcare services were better in other countries. Many knew from friends, families and other networks that not all Member States were like Malta, and had experienced that reality themselves. In the last chapter, Blota described her understanding that racism in other Member States was not as bad as that in Malta, providing the illustration of racial abuse on public transport. Despite reforms aimed at harmonising reception conditions across Member all States19, 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 Refugees and Exiles to be of particular concern (ECRE 2008a). 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 the Dublin II Regulation. All of the women explained their leaving Malta for other EU Member States because they had family or other networks in those countries:

Lota 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 the Dublin II Regulation. Her application to stay in the UK had been rejected. Field notes (3 February 2011)

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 & Shutter 1994; Bloch et al. 2000). Greater access to pre-established networks has the potential to minimise the marginalisation experienced by women in their social, economic, financial and political life as female migrants. The agency exercised in making the decision to migrate onwards is undermined by the operation of the Dublin II Regulation, which returns them to Malta and frustrates family reunification and access to support networks.

Disruption is particularly acute for women who have families who are all sent back to Malta under the Dublin II Regulation.

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. (Kiev)

According to the NGO participants, it is common for women to leave Malta to be with their families in other Member States and then to have children there (NGO 2). 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 participant was of the view that women have babies in other Member States as a strategy to facilitate their migration, believing that the child will obtain the citizenship of the country in which it is born and therefore not have to return to Malta (NGO 2). 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.

The implications of the Dublin II Regulation for the mental health of those returned to Malta warrant further examination. One NGO participant reported that asylum seekers on Malta struggle psychologically with the burden of ‘not knowing when their journey is to end’, as the operation of the Regulation makes onward migration unpredictable and uncertain (NGO 1). Previous studies have identified such insecurity and uncertainty as stressors in the post-migration context (Silove et al. 1997; Silove et al. 2000). Further research on the link between the Dublin II Regulation and mental illness among asylum seekers is needed.

PUNISHMENT ON RETURN

Some people leave to go to Europe and are 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. (LE 1)

The women we interviewed perceived the Dublin II Regulation 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 refoulement20 (Garlick 2006). Claims for resettlement, relocation or protection, all constitutive of pathways out of Malta, are also thus potentially terminally affected by the operation of the Dublin II Regulation. If women go to other parts of

20 Article 33(1) of the 1951 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.
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 US, as the above statement from the law enforcement participant makes clear. According to one participant, at the very least, their unplanned return causes delays in the assessment of their claim (Lamlya). In addition, if they leave the Member State by illegal means they may be subject to criminal charges. A law enforcement participant interviewed reported that in Malta, women returned under the Dublin II Regulation would generally receive a suspended six-month jail term if they left the country illegally (LE 1).

Lamlya perceived the reduction in financial benefits for those who return to Malta under the Dublin II Regulation as particularly punitive. She had her allowance reduced to 80 Euros upon her return to Malta. One of the women participants confirmed that ‘they get 80 Euros per month. After four months this is cut off’ (Asha). Asylum seekers and those with subsidiary or temporary humanitarian protection 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 the Dublin II Regulation and therefore lose their protection status. An uncertain future awaits those who lose their place in the queue. One NGO participant 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 safety concerns or a lack of diplomatic connections between Malta and their country of origin. The women participants 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 Dublin II Regulation has a questionable capacity to prevent secondary movement (Levy 2010). Rather, it punishes not only the asylum seeker, but also the Member State in which the asylum seeker arrives (Guild 2005: 637; 2006; Hurwitz 1999). The system places the responsibility for those who arrive in countries that border the EU solely with those countries – a situation that 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; northern EU Member States rely most on the Dublin II Regulation 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 asylum claims (Garlick 2006). Recently, Malta was criticised 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), discussed in the last chapter. Effectively, therefore, the Dublin II Regulation is operating as an internal deportation system from northern Member States to less well-resourced Member States along the southern border.
According to the Maltese Government, the numbers of people leaving and being sent back to Malta under the Dublin II Regulation place a strain on the country’s resources, and the numbers who leave Malta for other EU Member States are significant. The ineffectiveness of Dublin II in preventing secondary movement is confirmed by this research. The law enforcement, NGO and women participants 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 (NGO 1 and NGO 2). The numbers who are sent back return abruptly, creating added pressures on resources and services in Malta. According to one law enforcement participant:

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. (LE 2)

The Maltese Government has lobbied for an exemption from the Dublin II Regulation to address the large numbers, which are anticipated to grow further, arriving in the densely populated country (LIBE 2006). However, these pressures impact most profoundly and directly on transnational migrant subjects who are forced to return to Malta.

The compatibility of the Dublin II Regulation with the European Convention on Human Rights was the subject of a recent challenge in the European Court of Human Rights. In the 2011 decision, the Court fined Belgium for returning an asylum seeker to Greece, where conditions for asylum seekers were found to be degrading and inhumane. Asylum seekers fear returning to Member States of the EU in which they have already experienced poor reception conditions (Fekete 2011). The impact of this ruling on Malta is at this stage unclear. Given the criticism of Malta’s reception conditions, which for some asylum seekers include living in tents (MSF 2009b), this ruling is likely to have reverberations for those countries that send asylum seekers back to Malta.

RELOCATING ‘MALTESE’ REFUGEES – EUREMA (EU RELOCATION MALTA)

In response to pleas by the Maltese Government to share the ‘burden’ presented by irregular migration to Malta, the EU has responded by establishing a pilot project: the EU Relocation Program (EUREMA). Similar programs existed on an ad hoc basis previously with countries such as France and Germany, but the EU Relocation Program piloted in 2010 and set for extension into 2011 involves 10 Member States accepting a total of 255 transnational migrant subjects (EC 2010; Mifsud Bonnici 2011). In most cases, the Relocation Program is a transferral of protection

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for those who have received subsidiary protection in Malta and do not have to apply for asylum again upon arrival.

**SELECTIVE RE-BORDERING**

Selectivity is ingrained in the EU Relocation Program and Member States are heavily involved in carrying out these selections. Each Member State sets its own criteria for whom they will choose to relocate and these determinations are based on application forms or interviews. The criteria used by each Member State are not publicly available. The European Commission Directorate-General of Home Affairs reported, however, that the criteria is based on several factors:

Each of the participating Member States sets its own criteria: for example, language and job skills; specific nationalities and/or religions; those with family and friends in the country of destination; young people with families; people who are fit and healthy. (EC 2010: 15)

This general indication of the criteria suggests the ways in which selection might be gendered. Discrimination in country of origin, coupled with marginalisation in transit to Malta, may mean that women have had less opportunity to attend formal education to learn English and may be in primary caregiver roles which, without adequate childcare, limit their capacity to work. Those who speak some English, have some education, and possess job skills will have a better chance of being selected. Thus, gender inequality in countries of origin or in Malta might influence women’s prospects of being selected.

The interviews with NGO participants confirmed that the criteria are notoriously exclusive. As one participant remarked:

Each country usually provides their ideal profile. For the European countries this is an English speaker with educational background and with job skills. That is the ideal. (NGO 2)

The ‘ideal profile’ largely reflects the single male transnational migrant subject, who make up the overwhelming bulk of those who irregularly arrive in Malta. Any assessment of one’s capacity to become an economic contributor through work in the formal economy may render single women with children less attractive for selection. Moreover, women may be more likely to rely on social or welfare networks as a result of being primary caregivers to children, which might also impact their selection. That the complex needs of Somali women are a disincentive for some participating Member States was confirmed by one NGO participant:

In the big country intakes, a lot of [women] are just not taken, they just go, ‘no’, ‘no’, ‘no’. I mean they see a Somali woman, she has never been to school, she cannot write, she
speaks just Somali and maybe she has nine kids in Somalia! They were like, ‘no’. (NGO 2)

France, who participated in one of the ad hoc programs in 2009, had even gone so far as to make specific requests not to have women from Somalia:

France, last year, the first time they took a lot of women but this time, they say ‘no’. They say they have problems with them. This time they just take families, but single women, maybe a couple of single women with children, that’s the same with Germany. They say, ‘just two single women because we have to take on board the whole case’. But they should not just take single men ready to work. (NGO 2)

Conversely, as the comment below highlights, the larger intakes entail a greater likelihood of discrimination against women. It was the NGO participants’ view that more vulnerable cases – ie women with children, are accepted in the smaller intakes:

Usually, with small numbers, a lot of women are taken because it is easier. But when it is bigger numbers, it is more challenging to get them through. (NGO 2)

Women are seen as being resource-intensive and therefore not appealing to Member States. In particular, women travelling with children are an added disincentive for selection. Given the high number of single mothers in Malta, a considerable portion of women asylum seekers will be seen as a burden and excluded. This is also an indication of the types of supports that are not available to people who relocate. The selection criteria are geared towards people who are going to be less reliant on welfare and social support systems, and women often do not fit that mould. Women are thus problematised through the EUREMA selection process.

The conditions in Malta have been an incentive for participating Member States to get involved. One NGO participant said that they had taken delegates to see the tent village; after this visit, delegates were more enthusiastic about relocating people away from Malta. The poor conditions in Malta, the result of processes of securitisation, therefore acted as a human rights incentive to get people to exit Malta. This has particular gendered inflections, as described by one NGO participant:

Women, when they have children, especially when they are a single mother, there is little they can integrate here because of the lack of services. So they are more in need for relocation. For example, in Portugal, one of the good things was that in the centre there is childcare so the single mother she can get that, when they came to Malta they were shocked that we had no childcare. (NGO 2)
There are gendered dimensions to how the EU Relocation Program is operated and how people are accepted by each participating Member State. These are personalised borders relevant to gender, which work in ways to enhance their selection for relocation, but also detract from the possibility of being accepted, particularly for the larger intakes. This pilot project illuminates how re-bordering is able to re-categorise certain individuals as acceptable to cross borders further into the EU. Rather than collectively categorising transnational migrant subjects as illegal, as occurs when they enter Malta, borders can be reopened to enable those who fit an ‘ideal profile’ to gain entry to other EU Member States besides Malta. Effectively, the program works as a kind of gendered cherry-picking of transnational migrant subjects on Malta by other Member States of the EU, confirming warnings about this scenario eventuating which have been previously issued by scholars (Yuval-Davis et al. 2005: 518).

**US REFUGEE RESETTLEMENT PROGRAM**

Resettlement is one of three identified ‘durable solutions’ for refugees, alongside local integration and return (UNHCR 2011d: 28). These are not regulated by the 1951 Refugee Convention, but collectively these durable solutions comprise the mandate of the UNHCR (UNGA 1950). The UNHCR is also the organisation tasked with managing resettlement via its branch offices, like the one in Malta (Sandvik 2010). Resettlement is defined as follows:

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provides protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country. (UNHCR 2011d: 9).

To be eligible, people have to be recognised as refugees under the UNHCR mandate, and fit the UNHCR guidelines and criteria. These place an emphasis on people with particular protection needs, such as ‘women at risk’, and individuals with physical or mental health needs (UNHCR 2009b: 30). In 2009, 8.7 per cent of the international resettlement quota comprised ‘women at risk’ (UNHCR 2009b: 32).

Despite the presence of a large number of refugees around the globe, only a small number are resettled each year. Asylum in Western Europe and North America used to be premised solely on a capacity to permanently resettle a population (Hathaway & Castillo 1997: 3). Now, the most popular durable solution utilised is return (UNHCR 2009a). Resettlement was promoted in the period 1945–85 (Chimni 2004; Sandvik 2010), largely as a result of the need to rapidly achieve
economic recovery and refugees made up for the loss in labour power resulting from the conflict
in Europe. This enthusiasm gave way to a focus on voluntary repatriation in the period 1985–93,
followed by a focus on safe return, and then later imposed return (Chimni 2004). Resettlement
came to be regarded by Western governments as the ‘least desirable’ of the durable solutions
(Gallagher 1994: 430), in part because governments feared an unending tide of forced
population movements, but also because overall the labour shortage in the West is understood
to have diminished (Chimni 2004). However, this understanding has been challenged by some
scholars, who argue that the EU’s demand for labour, particularly unskilled labour, remains ever-
present (Baldaccini 2010; Melossi 2003; Wonders 2006). Now, increasingly, other forms of
temporary and complementary protection are being administered (Gallagher 1994). The numbers
of people accepted for resettlement have dropped to their lowest in a decade after the events of
September 11, 2001, in the US, although they rose sharply between 2006 and 2009 (UNHCR
2009b: 32). In 2010, of the 10.5 million ‘persons of concern’ globally, around 1 per cent, or
108,000 refugees, were submitted for resettlement by the UNHCR. The main beneficiaries of
resettlement originated from Iraq, Myanmar and Bhutan (UNHCR 2011c).

Refugees who arrive in the EU under the Resettlement Program enjoy a heightened sense of
legitimacy over and above those who arrive by other means and apply for refugee status
(Khosravi 2010). In his ethnography of his own refugee experience, Khosravi writes of advising
people that he had come to Sweden under a Resettlement Program, instead of arriving and
applying for asylum. It was his perception that this program held more esteem than those
whereby people arrive in the EU directly and claim asylum. Within this research, an NGO
participant also referred to those accepted into the Resettlement Program as a ‘pure’ refugee
(NGO 2) – indicating that those who participate in the program are perceived as more deserving
of protection, and more legitimate, than others in Malta. Resettlement programs also reinforce
the notion that there is a queue for resettlement, and act as a kind of moral appeasement that
serves to legitimise securitisation of migration discourses, policies and practices. As long as
countries are seen to be keeping the door open to some groups – those found to be ‘pure’ – then
they can justify the exclusion and marginalisation of other transnational migrant subjects.

A resettlement program operates in Malta to send those assessed as refugees to the US. The
US is the main resettlement country taking in a large number of people each year, followed by
Australia, Canada and the Nordic countries (UNHCR 2011c). The US Refugee Resettlement
Program in Malta is unusual for operating inside a developing country. It has been running
permanently since May 2008 (US 2010b), and has so far resettled over 600 people (TOM
2011b). Upon their arrival in the US, those resettled receive access to support services for 24
months, after which their support is stopped and they are expected to support themselves. The
program is due to conclude in 2012 (LE 1).
For Somali women, coming to Malta may be the first opportunity they have had to access a resettlement program. There are UNHCR offices closer to Somalia, in Kenya and Ethiopia, but they only have small intakes. In Kenyan refugee camps in 2005, of a total refugee population of 251,271 people (comprising 150,4595 Somalis, Ugandans, Rwandans, Ethiopians and Sudanese), 6819 were resettled, or a little under 3 per cent (UNHCR 2005c). In Ethiopian refugee camps, of a total refugee population of 100,817 (comprising 15,901 Somalis, Eritreans, Djiboutis, Congolese and Sudanese), 1240 were resettled, or just over 1 per cent (UNHCR 2005b). To participate in the resettlement program in Malta, people need to reside in Malta and await an interview, sometimes for many years.

The procedure for resettlement is a three-step process involving partners including the UNHCR, the IOM and the US Department of Home State (Catalfamo 2011). The UNHCR conducts the initial interview, determining whether or not the person meets its criteria. A case file is then prepared by the IOM, which also pre-screens the applicant. The US Department of Home State then interviews the person and assesses their refugee status under article 1A of the 1951 Refugee Convention. The legal status attributed to a successful applicant is that of refugee status, which entitles them to family reunification and eventually to citizenship if they are resettled in the US.

The US Refugee Resettlement Program highlights the inconsistent application of the 1951 Refugee Convention by both the US and Maltese authorities, and deference to securitisation of migration policy that restricts refugee protection in Malta. In recognising people as refugees through a secondary system, the resettlement program disperses legal responsibility onto other countries and away from Malta. In recognising such a large proportion of refugees, compared to the numbers accepted by the Maltese refugee processing system, the US program is testimony to the diluted and compromised nature of legal protections awarded to refugees who arrive in Malta. The numbers of asylum seekers recognised as refugees by the Maltese Government are miniscule. From 2006, the US has recognised 654 refugees in comparison to Malta’s recognition of 111 asylum seekers as refugees. The impact of the securitisation of migration on the experiences of women, therefore, is that they will be less likely to achieve refugee status on Malta. The US Refugee Resettlement Program proves this unequivocally.

The US Refugee Resettlement Program reflects the securitisation of migration in targeting and selectively re-bordering transnational migrant subjects. Despite the fact that asylum seekers arrive in Malta, a country within the EU, they are provided with visas and travel documents enabling them to resettle in the US with full refugee status, rather than the EU and rather than subsidiary protection status. The majority of the women participants interviewed in this study who were going to the US were positive about their resettlement. One woman participant however, was unhappy about being resettled in the US. Lota was a refugee woman who was a single
mother with three children who were all back in Somalia. She had been accepted by the US Refugee Resettlement Program and was due to go to Minnesota. She had no family in the US, and did not want to go there:

Malta is very bad; there are no jobs. Australia is very good! I’m going to America. I don’t know where Minnesota is. I don’t want to go. I am only by myself in America. I have family in Europe. I want to go to Europe. Europe is Europe, I want to go there. (Lota)

Proximity of and support networks in the destination country influence the migration choices of transnational migrant subjects (Massey 1994). Such networks may make the EU more desirable than destinations considerably further afield like the US. In the case of the US Refugee Resettlement Program, refugees have made the journey to the EU, been assessed as in need of humanitarian protection, but have been then dispersed to another continent – an outcome that this research has observed is not the most desirable for all. Additionally, it raises questions about the accuracy of Malta’s refugee determination system their commitment to refugee protection.

**SCREENING IN ‘WOMEN AT RISK’**

Data collected from the interviews with NGO participants suggests that the US accepts a large number of ‘vulnerable’ cases – that is, people with complex needs including women with children and in particular, single women with children:

In the beginning there was mainly single women with children being resettled, single women too they were all going. And it’s actually still like this because if you have single women or single women with children you are given priority so you go before the men. (NGO 2)

As the number of boat arrivals in Malta has declined, there have been fewer ‘vulnerable cases’ to assess and therefore more men being accepted into the program. Nonetheless, the initial stage of the selection process is still focused on resettling those with high protection needs, so applicants assessed as ‘vulnerable’ are given priority. This means that women who are pregnant, particularly single women, will be interviewed earlier and will constitute a priority case for resettlement. For the majority of the male population, there will be considerable delays in processing their applications for resettlement. When I was in Malta in 2010, the authorities were interviewing some applicants who had arrived by boat in 2004–05. Thus, the queue for resettlement stretched a considerable distance.

This emphasis on vulnerability and the prioritisation given to those within this category intersects with the data on perceptions of ‘forced pregnancies’ previously discussed in this study. The NGO and law enforcement participants felt that women were getting pregnant as a strategy to enhance
their resettlement (LE 1 and LE 2). There are inducements within the system for women to become pregnant, in order to gain priority within the US Refugee Resettlement Program. There is research that suggests that immigration patterns influence fertility rates among groups of women (Arendell 2000). This is an area in which further research is required.

In this illustration above, ‘degree of vulnerability’ becomes a key factor that enhances successful passage through US border controls. The border is embodied by the gendered transnational migrant subject and her circumstances. The more vulnerable a woman is, the more accessible the border becomes. Single women with children, or pregnant women, are able to move through the refugee resettlement program more rapidly and obtain an outcome more quickly. The NGO and law enforcement agency participants in this study were critical of refugee women who were pregnant, believing that they were becoming pregnant deliberately to enhance their chances of resettlement. However, the women participants did not talk about pregnancy in relation to resettlement strategies. Yet in analysing the US Refugee Resettlement Program, it is clear that personalised factors do bear a great influence over whether or not one will be accepted into the US. Whereas the EU Relocation Program has varying criteria for each Member State, the criteria for the US Refugee Resettlement Program appears consistent and represents the selective re-bordering of Malta to prioritise the protection of ‘vulnerable’ transnational migrant subjects

ASSISTED VOLUNTARY RETURN

The conflict in Somalia is likely to have influenced the low number of Somalis who have availed themselves of AVR programs in Malta. There is historic precedence for the voluntary return package, which had been popular from 1985 until 1993, during which time imposed return gained prominence (Chimni 2004). A number of voluntary return programs are administered in Malta and the government has hosted delegations of representatives from several African nations to try to build networks to promote return (Pisani & Giustiniani 2009). The IOM, together with the Department for Justice and Home Affairs, facilitates an AVR program whereby migrants receive 2400 Euros as an incentive to go back to their country of origin. The NGO participants remarked that the uptake by women involved in this program was very low (NGO 1). According to return figures at 2009, only 11 women had nominated to voluntarily return(Pisani & Giustiniani 2009). Only one person returned to Somalia and their gender is not known. In terms of onward migration, therefore, AVR does not figure as a viable legal pathway for exiting Malta for transnational migrant subjects from Somalia.
Family reunification was a common theme in the discussions with many of the transnational migrant subject women interviewed in this study. The women described how their families were dispersed across many continents. As one woman said:

My husband is in Holland and I have been to Holland to see him. I did not know where he was for five months. I found out two months ago that he was in Holland. He came to Europe while I was in Malta. He got out of Somalia and met a very nice Ethiopian man who helped him. He said I don’t know if you will get there alive but it is not safe to travel through the desert. He helped him get documents and travel via China to Holland. He lives in an open house there … My children are still in Ethiopia. I hope to reunite with them. (Sena)

The nature of conflict and the conditions of exit mean that families often become separated in various countries. Malta’s humanitarian protection provisions give no rights to beneficiaries of subsidiary or THP to bring their family to Malta. Instead, they are dependent on being sent to other countries to reunite with their family, and rely on the hope that their families will eventually follow them.

Family reunification provisions in the EU have become increasingly restricted (Yuval-Davis et al. 2005). Only those with refugee status have rights to family reunification.22 The restrictions include the ‘narrow interpretation of what constitutes the family and the conditions (housing, income, no recourse to public spending) imposed upon those seeking to avail themselves of this right’ (Yuval-Davis et al. 2005: 518). This is reflected in the EU Relocation Program operating in Malta, whereby the existing presence of family members is a criterion so that those relocated will not avail themselves of state social and welfare supports. Yuval-Davis, Athhias et al. (2005) argue that ‘family migration is generally associated with female migrants, whose contribution to the labour market is discounted, and who are primarily seen as introducing traditional practices, such as arranged marriages, authoritarian gender and generational relations, and religious practices into secular, modern and liberal societies’ (2005: 519). Family reunification was considered an important priority for the women participants interviewed in this study, but, conversely, is seen by governments to be associated with women’s migration, and therefore less desirable.

Family reunification is supported in Malta, but is predicated upon reunification occurring in another country. The Emigrants Commission, a local NGO involved in working with migrants and asylum seekers in Malta, has a program specifically designed to promote family reunification for

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people in Malta in other parts of the EU (NGO 2). This study, along with others (FIDH 2004), has identified that the Emigrants Commission’s express focus is to assist refugees to leave Malta (FIDH 2004). An Ivorian participant in a study by the International Federation for Human Rights reported being admonished by the Emigrants Commission on returning to Malta after trying to establish himself in Sweden (FIDH 2004: 30). Other programs, such as the US Refugee Resettlement Program and EUREMA, also feed into family reunification. In this research, one NGO participants said that the reason for Malta’s biased support of family reunification was twofold: first, because Malta is a Catholic country in which the belief that families should be together prevails; and second, because Malta does not have the resources to support family reunification in Malta (NGO 2). Thus, family reunification is only a possibility if it involves sending transnational migrant subjects from Malta to other parts of the EU or the US.

**DEPORTATION**

Deportation has become a significant priority for the EU (Fekete 2005). Having an actionable return program is considered essential to the credibility of the EU’s common policy targeting irregular immigration (Baldaccini 2010). Testament to its perceived importance within the EU, the development of a policy on return has been prioritised over policies on admission and stay, for example (Baldaccini 2010: 116). Linked to this renewed emphasis on deportation has been a documented increase in suicide, self-harm and injuries among transnational migrant subjects, either in pre-removal detention or while being forcibly placed on planes to leave the EU (Fekete 2005, 2011).

The concept of deportation poses risks to an individual and their fundamental rights derived from international law (Baldaccini 2010). The 1951 Refugee Convention contains prohibitions on refoulement – the removal of a person to a place where they face persecution (Article 33). A non-refoulement provision is also contained within the European Charter of Fundamental Rights and is non-derogable (Baldaccini 2010). Removal must respect human dignity as is provided for in the ECHR at article 1.23 There are also restrictions on the detention of deportees. Article 5 of the ECHR provides for detention pre-removal so long as it is strictly necessary for the enforcement of the removal order. The European Court of Human Rights recently speculated that, in the case of Malta, being an island, there is little need for pre-removal detention.24

Having an enforceable deportation policy was considered important by both the NGO and the law enforcement participants interviewed in this study, which they viewed as lending legitimacy to the asylum processing system as a whole. One NGO participant felt that the argument for international protection, and the myth-busting around ‘legal’ and ‘illegal’ ways of entering Europe,
was a difficult one to package without taking a hard stance on those without international protection. For Malta, he went on to add, the situation is more difficult:

But the problem for Malta is of course partly that because Malta is small they don’t have bilateral relations with many countries so it’s difficult to negotiate with countries to facilitate returns. So most of the time when they’ve been able to take people to Nigeria, it’s in cooperation with other European countries. There might be a plane coming from somewhere else and it stops in Malta to take people. They are looking, Malta is quite active, they are discussing with Ghana and Nigeria to improve those processes. We’ll see if they get anywhere. (NGO 1)

This comment suggests that even though people may have had their asylum claims rejected in Malta, few are being repatriated or deported back to their country of origin. In 2009, Maltese Government statistics show that of the 897 Somalis subject to an ‘obligation to leave’, none were returned to their country of origin (NSO 2010). Malta is actively looking to engage other sending countries in the diplomatic process so as to be able to return people deemed not to be in need of international protection. Allowing asylum seekers to remain in Malta even though their claims have been rejected is seen as detracting from the credibility of the asylum system in Malta.

Vulnerability is particularly acute for those who are ‘doubly rejected’. The Removals Directive25 of the EU contains no provision for people to receive any kind of support once a removal order has been issued, regardless of whether or not they may be in pre-removal detention or living in the community. There are no precautions taken against homelessness or destitution. In situations where return cannot be effected, this leaves people in a precarious and vulnerable position for an indefinite period (Baldacchini 2010). This scenario echoes Bauman’s formulations of a state of limbo, whereby refugees lose their place on earth as a result of their statelessness, and are ‘catapulted into a nowhere’ (Bauman 2002: 112). Stripped of access to rights and entitlements, transnational migrant subjects are thus reduced to ‘social nakedness’ (Bauman 2002: 116). They live in a state of exception outside legal frameworks, simultaneously excluded and included (Agamben 1998). This, Agamben argues, is the place of sovereignty – ‘the particular “force” of law consists in this capacity of law to maintain itself in relation to an exteriority’ (Agamben 1998: 18). Transnational migrant subjects are recognised as legal subjects through their very exclusion.

Deportations are notoriously difficult to achieve in Malta because the country has few diplomatic ties with countries of origin in Africa and due to the financial costs of deportations. The IOM has worked with the Maltese Government to bring delegations of representatives from various African states to Malta to increase networks and diplomatic ties for this purpose (Pisani & Giustiniani 2010).

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While returns to Somalia have been ineffectual (as cited above), the Maltese Government statistics show returns to Egypt, Libya and Tunisia – all countries with which Malta maintained diplomatic relations before it joined the EU – were more ably effected (NSO 2010). Malta is able to utilise the wider EU funds to carry out deportations, but the numbers returned are only small:

We had to fund an entire jet for four people to return to Mali in 2008. This was paid for by the European Union Return Fund and Frontex. They pay all the costs of repatriation because we can’t afford it; we are only a small country. (LE 1)

The lack of diplomatic ties between Malta and the countries of origin of those who are subject to an obligation to leave, coupled with the costs of deportation, play a significant role in preventing removals from taking place. This results in people having to stay in Malta, ‘stuck’ and unable to move either forward or back to their country of origin.

During the period in which the field work was conducted in Malta, Ghanaian and Nigerian embassy representatives were in Malta negotiating the return of their nationals (TOM 2010b). The participants interviewed in this study reported two distinct modes of approaching deportation by each of the Ghanaian and Nigerian cohorts in Malta. The NGO participants said that the Ghanaian representatives spoke with male rejected asylum seekers at the Marsa Open Centre in order to negotiate their return to Ghana (NGO 2). Nigerian nationals in Malta, on the other hand, were subject to very public raids at their places of work and accommodation:

Some of these people had established lives in Malta, were working and had Maltese partners. They were contributing to the local economy and have now had to go into hiding. The government are arresting them for deportation. (NGO 2)

This NGO participant stated that those arrested were placed in pre-removal detention, and that she had a client with severe mental health problems who was mistakenly rounded up as part of the arrest for deportation operation (NGO 2). The client was placed in detention for three days without the regular medication they required. They were finally released only after their identity papers had been checked. This narrative reveals that different approaches are pursued to effect deportation. In the Nigerian example, people were forced into precarious living arrangements to avoid arrest. One NGO participant reported that a Maltese support group had been set up to channel food and other resources to those unable to return home or go to work for fear of being arrested (NGO 1). This situation had gendered dimensions: women were also said to be among those affected and forced to live undetected (NGO 1). This scenario increases already persistent levels of vulnerability, exacerbating the risk of using illicit means to leave Malta and reliance on the informal economy. Precarious living conditions are likely to have a wider and more profound impact on women who are primary carers of children. This punitive and aggressive approach led many Nigerian men and women to go into hiding in Malta.
SMUGGLING AND TRAFFICKING FROM MALTA

Malta is under increasing international pressure to do more to address human trafficking, a phenomenon that in Maltese law is not distinguished from smuggling. For the past two consecutive years, Malta was named in the US Department of State’s Trafficking In Persons Report as being on the Tier 2 – Watch List, as a result of not doing enough to address perceptions of migrant vulnerability to human trafficking in Malta (USDOS 2011). The law enforcement participants in this study estimated the issue to be most relevant to particular cultural groups in Malta, but overall as of limited significance:

With West Africans you have the issue of trafficking. We train the staff to refer these cases to the law enforcement and the appropriate welfare agency. This can be labour trafficking but also prostitution. There hasn’t been any in the reception centres and this is not a significant problem. (LE 1)

This statement reveals that there is a process followed when victims of trafficking are identified which involves both welfare support and prosecution. In terms of welfare support, the 2011 State Report is critical of Malta for not offering ‘victims’ of trafficking the opportunity to testify, and, in theory at least, to be resettled in another country with a new identity. The Report concludes that ‘the Maltese government did not offer this option or any other legal alternatives for identified trafficking victims to avoid removal to countries in which they would face retribution or hardship’ (USDOS 2011).

The conflation of smuggling and trafficking constrains the issue within a simplistic paradigm, whereby both offenders and victims are targeted for punishment. In Maltese law, smuggling and trafficking are not distinguished and are used interchangeably (LE 1). Local media in Malta have reported a number of cases of suspected sex trafficking. The Times of Malta reported that a young, ‘attractive’ Somali woman turned up at the airport in Malta to purchase a ticket to Denmark and was arrested (Micallef 2010). Instead of being offered programs or support, she was prosecuted for using false documents to leave Malta. The court handed down a six-month jail term but suspended her sentence. In the article, the journalist reports that police acknowledged the existence of a number of similar cases. Current legal and policy approaches to trafficking/smuggling misrepresent the complexity of the issue, and thereby narrow the kinds of responses put forward to address it. The gendered impact is that ‘victims’ are receiving terms of imprisonment.

While the law enforcement participants described trafficking as ‘not a significant problem’ (LE 1), there is a fear of trafficking among Maltese Government officials. Indeed, vulnerability to trafficking is ostensibly used by the Maltese Government to reinforce its mandatory detention
policy. As one NGO participant said, women’s perceived vulnerability to sex trafficking has meant the government has been less inclined to release them from detention:

We proposed that women should be one of the groups, especially single women, considered vulnerable and released early from detention, just like the minors. We also tried to argue that there isn’t much risk that the women would abscond, for us it doesn’t make any sense to keep women in detention … The government came back to us with concerns that if people find out that there is no detention for women then trafficking will go through Malta. So, we have to continue that discussion and trafficking is a concern for sure. We’ve had some attempts, especially with the Nigerians where we have some concerns on this, but it is very difficult to get any dialogue with the women on this. (NGO 2)

It is clear from this statement that the Maltese authorities are aware that there is a problem with regard to trafficking, and that they fear it may impact on women who are released from detention.

One effect of the containment policies pursued by the Maltese Government is that people are pushed into making illicit arrangements to exit the island. The NGO and law enforcement participants interviewed for this research said they were aware of false documents being sent from Spain and Italy to Malta for people to use to try to leave the island (LE 1 and NGO 2). The Times of Malta reported that a Somali woman received a one-year suspended sentence for trying to leave Malta on a forged passport (TOM 2010a). The woman explained that she was trying to get back to Mogadishu where her father and two brothers had been killed the week before. She did not have a passport or legal travel documents. Her lawyer reportedly told the Maltese Magistrates Court that she had thought the legal process required to obtain them was too lengthy, and there was also no guarantee that her application to travel or for travel documents would be approved. As a result, she purchased documents through the black market (TOM 2010a). The inaccessibility of mobility options is funnelling people into extra-legal modes of travel.

The reliance on illicit networks to exit Malta results in the criminalisation of migrants in traditional criminal justice paradigms. The legal restrictions which contain migrants on Malta are amplifying deviancy among transnational migrant subjects (Weber and Bowling 2008). The actual criminalisation of these aspects of migration has played a role in increasing Malta’s imprisonment rates, so that 40 per cent of Malta’s prison population is now foreign-born, 61 per cent of whom are from Africa (Debono 2010). The foreign-born prison population in 2008 was 9 per cent, so these recent figures represent a dramatic rise. A gender breakdown of these statistics is not available. In another instance, in 2010 it was reported that a ‘heavily pregnant’ migrant woman was given a suspended jail term of one year, suspended for two, for trying to leave Malta with false travel documents. The woman was 25 years of age and nine months pregnant. Her lawyer
said that she was trying to seek a ‘better life in another country’ (TOM 2010c). While a suspended sentence means this woman is released into the community and does not have to spend time in jail, one must question the impact this will have on her application for permanent legal status within the EU. What if she tries again and receives a further sentence? These sanctions effectively complete the criminalisation of migration, shifting the impact from rhetoric to actual criminalisation.

The prosecution of transnational migrant subjects for leaving Malta with false documents raises further questions about the Maltese Government’s and the Maltese Police’s rationale for adopting this practice – valuable questions for further research. In other government spheres of policy and practice, it appears that the government assists transnational migrant subjects to leave Malta to travel on to other parts of the EU. Indeed, one NGO participant claimed that this was why more people received THP in 2010, as it would entitle them to apply for travel documents to leave Malta (NGO 1). The policy and practice of prosecuting transnational migrants for leaving Malta with false documents thus seems at odd with other policies pursued by the Maltese Government. Moreover, the practice contradicts Article 31 of the 1951 Refugee Convention on the non-penalisation of asylum seekers for illegal entry. This issue was the subject of research carried out by Hales (1996a) in the UK. Hales came across significant numbers of asylum seekers in UK prisons serving sentences for using false documents when trying to transit through the UK. The asylum seekers had been intercepted at UK airports en route to other countries. Airport staff notified the police and criminal prosecutions followed. Alternative methods of handling these cases, such as through immigration law and consistent with the 1951 Refugee Convention, were not pursued. These asylum seekers were given sentences of between six and nine months each, which they had to serve in trying prison conditions (Pirouet 2001). Whereas the UK has now removed its immigration exit controls (Home Office 2009), Malta is still continuing to detect and prosecute those who use false documents to leave, in contravention of Article 31 of the 1951 Refugee Convention.

CONCLUSION

The legal and extra-legal mechanisms of exiting Malta and moving on to other countries are gendered. Women are either prioritised as vulnerable cases, particularly if they are single women with children, or viewed as too burdensome and resource intensive. This is exacerbating vulnerability for women in a context in which racism and hostile reception conditions already compound destitution:

The vast majority experience a desire to move to other European countries which, however, return them to Malta under the Dublin Regulation. Unable to integrate in Malta and, in many cases, to return home, frustration and inertia prevail in migrants’
communities, as witnessed by the Commissioner during his discussion with a number of migrants. This has prejudicial consequences even on the mental health of the persons concerned, which reportedly deteriorates in some cases as the situation of uncertainty is protracted. (Hammarberg 2011: 14)

This lived experience of destitution conflicts significantly with the mantra of refugee protection: that people will be accorded access to rights and entitlements to enable them to live free of persecution. It is, therefore, foreseeable that, experiencing these kinds of conditions in Malta, transnational migrant subjects are going to continue to attempt to flee Malta in search of protection in other EU Member States.

Containment and control mechanisms structure the onward migration pathways pursued by transnational migrant subjects on Malta. Their strategic decisions around onward migration are undermined by the operation of the Dublin II Regulation, which punishes those who are returned to Malta. Transnational migrant subjects are structurally propelled towards adopting illicit means to exit Malta by the constraints on legal onward migration and their successful containment in conditions that are more akin to destitution than ‘integration’. The experiences of those who leave or seek to leave Malta can be characterised by selective containment and re-bordering. The vulnerability of those who are not able to access relocation or resettlement programs, and are also unable to return to their country of origin, is a foreseeable consequence. Those who leave Malta by illicit means are then punished within the traditional criminal justice system, and the cycle of containment and punishment is complete.

The selective reallocation of particular transnational migrant subjects from Malta has a foreseeable impact on the country. This kind of cherry-picking means that those who are left in Malta will likely be the most uneducated, unsuitable for the labour market and most likely to lack English skills, further exacerbating difficulties in integration and experiences of malcontent for transnational migrant subjects ‘stuck’ in Malta.
CHAPTER 10: REGIMES IN CONFLICT - THE IMPACT OF THE SECURITISATION OF MIGRATION ON REFUGEE WOMEN

This research began by charting five points of tension between the securitisation of migration and refugee protection. To draw together the theoretical and empirical contributions of this research, this chapter returns to each of the key tensions and research questions that guided this inquiry across the four stages of transnational migrant women’s migratory journey: exit, transit, arrival and onward migration. The first pertains to exit and the tension between securitisation’s regimes of non-entrée and the requirement to cross an international border to seek refugee protection. Second, the tension between warehousing asylum seekers in transit and access to, and experiences of, refugee protection. The third and fourth tensions arise in the context of arrival in Malta: refugee protection entails access to rights and entitlements and non-penalisation for illegal entry, yet the securitisation of migration dilutes rights and entitlements and introduces detention as a key plank of securitisation of migration policy for those who arrive extra-legally. The final tension surrounds the prohibition on refoulement and the narrowing of opportunities to apply for asylum within the EU.

These research questions were addressed by listening to the experiences of women who have travelled from Somalia or Ethiopia to Malta and sought refugee protection. The experiences of the 26 women at the centre of this research are some of the countless many that flee persecution in Somalia. Conflict in the Horn of Africa and particularly in Somalia, has contributed to considerable refugee populations in neighbouring countries. The participants in this study represent part of the small minority that successfully reach the EU and apply for asylum. Many more remain in Somalia or in refugee camps in Kenya, Ethiopia and other countries, and many perish in transit. What the women participants are able to tell us about their daily-lived account of seeking refugee protection therefore provides critical insights. Listening to women’s experiences provides an alternate narrative to the grand official accounts that dominate policy and decision-making on immigration and securitisation within the EU and indeed globally.

TENSION ONE: REGIMES OF NON-ENTRÉE AT EXIT

Alternate tools of travel at exit – the relevance of visas for transnational migrant subjects

The securitisation of migration has cemented the place of visas as the legally accepted tools of travel for entry into the EU, but has not dislodged refugee protection as a legal pathway. Without a visa however, the women participants in this study were reliant upon refugee protection as the sole legal pathway of entering the EU. Visa requirements, enforced through carrier sanctions, constitute a regime of non-entrée that actively targets asylum seekers and refugees for exclusion from the EU. This risk-reduction strategy brings the ‘functionally mobile’ (Weber 2006) EU border to the embassies, consulates and airport check-in counters in countries in the Global South. However, risk-reduction strategies do not ameliorate mobility. Rather, securitisation contributes to a situation whereby many
asylum seekers are forced to arrive at the external border of the EU to apply for asylum. Some will be incapacitated as this new penology intends (Feeley & Simon 1994). For the participants in this study, where there is no accessible EU consular presence in any case (HRW 2008; AI 2010), visas were an inoperable refugee-seeking strategy.

In crossing international borders to enter the EU, the participants in this study utilised alternate tools of travel that displaced the ‘normal’ requirements for visas. None of the women I spoke with talked about visas at exit. Indeed, the participants appeared not to make a distinction between legal and illegal pathways to the EU. Rather, the ‘norm’ for the women I spoke with whose primary reason for leaving Somalia was the lack of security and safety in that country was to cross the border into Ethiopia, followed by Sudan and Libya, and then to travel by boat to the EU. This method provided a way of entering the EU and being legally entitled to stay. That this was an illegal/irregular means of entering the EU was not clear to these women when they left Somalia. The categorisation of legal vs. illegal, and regular vs. irregular, receives a great deal of attention by EU policy-makers, but the ordinary experience of migration for the transnational migrant subjects in this study is to arrive at the external border to seek asylum.

The complexities of decision-making at exit

Insight into women’s experiences of exit enabled a deeper understanding to emerge of the kinds of factors that influence women’s decision-making. Complex layers of factors and interests influence the decision to exit. Chief among these was the security situation in Somalia and exposure to or experiences of sexual violence. While some of the participants said that Somalia was dangerous for men, women and children, a number expressed the view that the conflict had a particular, and heightened, impact on women. There was thus a greater need to ensure their safe passage to exit the country to seek refugee protection. Women needed to make strategic decisions about their vulnerability especially in relation to exposure to sexual violence, which often resulted in the decision to leave Somalia.

In this study, some transnational migrant women were found to be more in charge of their decision to exit Somalia than others, and this is presented here as the emergence of two ‘ideal types’ from Massey’s (1993) mobility spectrum. Some women were the primary initiators of their migration, and some were subjected to the decisions made by others. Participants who initiated their own migration determined that they would seek a better life elsewhere, echoing a trend documented by Martin (2001 in Nolin 2006). For those with children, some made the decision to take them with them and others to leave them with family in Somalia or neighbouring countries. Some women decided they would leave first and that their husbands should follow later. Those participants who were not primary decision makers were often sent away from Somalia by their parents, other family members or close family friends. The conflict drove families to send their children to safety. Women’s migration was therefore found to be not merely associational, as it has historically tended to be represented in the literature (Balan 1981; Thadani & Tedare 1979). Rather this study revealed how some women would be sent first to work and send money back to the family, a role traditionally associated with males and
demonstrating the shifting gender roles which see women assuming key responsibilities as income earners abroad (Kapur 2005: 221). In many cases, participants said that they wanted their families to reunite with them later. This research has confirmed the centrality of safety in motivating those who migrate to flee persecution, but also the influence of other economic and non-economic factors such as income generation and family reunification, and other people in the decision-making around migration.

**The impact of deterrence policy at exit**

In considering women’s experiences this research also came to consider the ineffectiveness of securitisation of migration policies of deterrence at the key stage of exit. Considerable emphasis is placed on policies of deterrence aimed at preventing transnational migrant subjects from coming to the EU through the threat of punishment. Deterrence is the central aim of Malta’s mandatory detention policy (Abela 2011). However, deterrence requires the dissemination of information on the risk of punishment: without such knowledge among those targeted by these policies there can be no deterrent effect (Zimring & Hawkins 1973). This research has shown through an examination of women’s narratives their impressions of Europe at the stage of exit. In this study, transnational migrant subjects spoke about their impressions of and the ideas they associate with Europe, as a place of safety and refuge: ‘A place to bring children to’ (Amina). This impression was central in the decisions of transnational migrant subjects to make the journey to the EU. As Amina and many other participants later remarked, she had no idea about the ‘behaviour and rules of Europe’. The securitisation of migration results in a dramatic contrast between expectations of Europe and experiences upon arrival. This is a concrete indication that government assumptions about deterrence policy and the information sources actually relied upon by transnational migrant subjects, differ widely.

Mandatory detention was considered a central plank in the deterrence regime of Malta. Yet the conversations with women about their decisions to exit Somalia revealed that none had consumed information about Malta or its policy of mandatory detention. In quantitative terms, the statistics also cast doubt over the effectiveness of deterrence as a policy to stop people arriving in Malta and applying for asylum. As a law enforcement participant commented, mandatory detention was in place prior to the phenomenon of people arriving from Northern Africa and applying for asylum in Malta. The numbers increased as soon as carrier sanctions and compulsory visa requirements were harmonised; thus for Malta, as distinguished from other Member States, this ‘new penology’ (Weber 2007) resulted in increased numbers of transnational migrant subjects arriving by boat and seeking asylum. The numbers fluctuated over the following decade, and in 2011 are again on the rise (Hammarberg 2011). For Malta, the most significant impact on numbers has been the bilateral agreement between Libya and Italy, part of the ‘preventative infrastructures’ (Bosworth & Guild 2008) developed to manage migration, and which is also emblematic of the new penology. This agreement reduced the number of arrivals from 1508 in 2009 to 48 in 2010 (NSO 2011). The bilateral agreement greatly incentivised Libya to co-operate in stopping boats from departing Libya for the EU and relied on interdiction for those boats that did leave Libya. Deterrence policies of mandatory detention cannot be seen to have
had an impact on decreasing the number of transnational migrant subject arrivals. Rather, the effect of policies of deterrence, as this research has identified, has been to punish transnational migrant subjects for irregularly arriving in the EU.

**TENSION TWO: WAREHOUSING IN TRANSIT AND DURABLE SOLUTIONS**

Experiences of transit varied among the participants. Both gender and access to financial resources were significant factors in influencing this variation, not only impacting on the nature of the journey but also on whether women transit a refugee camp. The EU places considerable emphasis on, and commits significant resources to, warehousing populations of transnational migrant subjects in the region of origin to prevent their travel onwards to the EU. Women’s experiences of transit in this study demonstrated how money can reduce exposure to violence and accelerate the journey to the EU. Some participants were able to make the journey to the EU quickly; others faced long periods in detention and/or had to stop and work en route to afford the rest of the journey. Previous research has shown that gendered distributions of refugee populations mean that the majority of women who exit their country will be warehoused in refugee camps in their region of origin compared to a minority who reach the EU to seek asylum (Bhabha 2004).

This study found that access to financial resources, proximity to a refugee camp and family separation are likely determinants of women’s mobility in crossing borders to seek refugee protection beyond camp environments. The participants in this study did not spend time in or transit a refugee camp, which may indicate how effective refugee camps are at containment. Various other explanations were offered in this research as to why. NGO participants understood that refugee camps were more attractive an option for those who lived in close proximity to a camp, and for those who wanted to continue to live with their family, as the journey to the EU for many is one of family separation and fragmentation. Furthermore, access to financial resources was essential for travelling beyond a refugee camp. Law enforcement participants felt that it was a matter of connections: those with relatives or direct family members in Europe or the US would attempt to migrate to those countries. None of the participants said they sought to stay in their region of origin, in particular because the conditions there were characterised by violence, albeit to varying degrees.

Women’s experiences of transit en route to Malta reveal the inaccessibility of refugee protection in the regions neighbouring Somalia. None of the participants in this study accessed refugee protection in any of the countries through which they transited – Ethiopia, Sudan or Libya. Rather, for many of the participants in this study, transit was characterised by exposure to, and experiences of, direct and structural violence. Securitisation of migration contributes to the conditions in which mobility comes at a higher price, literally and metaphorically. The ability to withstand and/or negotiate direct and structural violence in transit is a major determinant of who is able to successfully transit to the EU. It is telling that the only legal intervention women experienced was detention in Libya – the construction and maintenance of which has been partially funded by the Italian Government (Ronzitti 2009; HRW 2009).
Gendered violence in transit

Women’s experiences of crossing borders into the EU revealed the gendered nature of exposure to violence. This study observed how the various borders the women had to cross entailed different experiences in transiting North Africa to reach Malta. Some borders were crossed quite easily and quickly, such as the border between Somalia and Ethiopia; indeed, little mention was made of this border crossing in the interviews. In this study, participants described how, as their journey brought them closer to the EU external border, the borders they crossed became more difficult to navigate, more costly and more violent. In this regard, the following three junctures of transit were discussed the most: sexual violence crossing the Sahara Desert into Libya, detention in Libya, and the dangerous boat journey to Malta.

There is a strong correlation between the sites of women’s experiences of violence and the efforts of the EU, pursued under the guise of ‘externalisation’ according to official accounts, to secure the EU’s external borders to exclude transnational migrant subjects. This is demonstrated through the bilateral agreements and other EU arrangements that fortify places en route to the EU, such as Libya, so that transnational migrant subjects can be prevented from reaching the EU. Other scholars have noted how border controls and the business of migration symbiotically reinforce each other in the borderlands surrounding the Global North (Michalowski 2007; Andreas 2003; Pickering 2005). This research has identified how, in the North African context, co-operation on border control can be intensified through bilateral agreements and the gendered impact of this intensification.

The bilateral agreement between Italy and Libya has shaped the securitisation of migration through North Africa. There are more obstacles to mobility through this region than in earlier stages of the women’s journeys, and a higher price for those seeking extra-legal migration to the EU. There is a considerable bounty placed on the bodies of transnational migrant subjects in transit – they are perceived as wealthy and therefore become targets for extortion. The women participants sought to ‘live in the shadows’ in Libya to avoid detection by the authorities and other agents who would extort, detain or expel them. The women participants in this study spoke of being arrested while trying to board a boat to the EU, and their arrest landing them in detention for varying periods of time. Some of these women described being beaten in the Libyan detention centres. Moreover, transnational migrant subjects have to pay a great deal to bribe their way out of detention. It is telling that since the agreement between Italy and Libya has been terminated, prices to travel to the EU have reportedly dropped (Hammarbarg 2011; Chulov & Tisdall 2011). Thus, securitisation contributes to making the journey through North Africa more difficult, more expensive, and potentially more dangerous for transnational migrant subjects, particularly women.

Borders, women’s bodies and the securitisation of migration – ‘embodied borders’

For many women, border crossing involves negotiating racialised, gendered and classed ‘embodied borders’. This research has extended Ortiz’s (2001), Wonders’ (2006) and Khosravi’s (2010) notion of borders and embodiment. Ortiz has posited that, in the context of the US–Mexico border, ‘Mexican
Americans embody the border in their skins or in their last names’ (2001: 104-5). Wonders also talks about borders being embodied through gendered border enforcement, and border performance being highly gendered. Recent scholarship by Khosravi (2010) advances notions of personalised and gendered borders. He argues that only those who are physically able surmount border controls, described by Khosravi as able-bodied young men (Khosravi 2010: 104). Khosravi also personalises the notion of an embodied border describing his own embodiment of the border, gendered through the male experience. In studies of women’s experiences, rape has been constructed as the ‘price’ for crossing borders into the US from Mexico (Carpenter 2006). This research identifies how the currency of women’s bodies during border crossing is manifest in three key ways: first, rape can be used as the toll or price for crossing borders; second, sexual services may provide or guarantee passage; and third, in some instances money can be paid to avoid being raped when crossing borders. Women’s bodies take on a currency in border crossing and gender inequalities are reproduced by border controls in transit. The participants spoke of transnational migrant women being targeted as a group for sexual violence by guards or private militia, many of whom were facilitating their mobility. Transnational migrant women, NGO and law enforcement participants talked about how women faced a more difficult time than men in crossing borders into Europe, and sexual violence or the provision of sexual services was often the border toll paid by women to negotiate their crossing. While some of the women participants in this research were subject to sexual violence as a condition of their border crossing, NGO participants suggested that some women were agentive in using sexual services to pay for their journey. It was their view that women were drawn into sex work as part of an exchange for assistance in crossing borders. Further supporting the notion of embodied borders being ‘classed’, participants suggested that access to financial resources could prevent sexual violence. Those responsible for administering this violence seemed to operate with impunity. The consequences of ‘embodied borders’ for some women are that many arrive in Malta pregnant or with children born en route.

Reluctant search and rescue – tensions on the high seas

As Klepp (2010) has also observed, this study found that tensions between the securitisation and refugee protection frameworks are fought at the external borders of the EU, far from the institutions that developed these frameworks. Klepp concluded that law enforcement agents in Malta resent EU policies, such as the Dublin II Regulation, that place considerable onus on them to conduct border controls for the whole of the EU. While institutional frameworks like the European Parliament exist to manage the robust contestation of these policies, this resentment is instead being acted out on the high seas and is manifesting in practices of interdiction that return asylum seekers to their point of disembarkation (Klepp, 2010). Several participants in this study mentioned a hostile reception by boats in the Mediterranean between Libya and the southern EU Member States. Some said that commercial fishing vessels had refused to assist them. EU policies are thus manifesting in the refusal of commercial fishing vessels to intervene to assist a boat in distress that is carrying transnational migrant subjects, seemingly in direct contravention of international norms surrounding safety of life at
sea. The consequences of ignoring these tensions being played out in the Mediterranean raise the spectre of an increase in fatalities.

**TENSION THREE: DILUTED RIGHTS AND ENTITLEMENTS UPON ARRIVAL - FOSTERING SOCIAL EXCLUSION AND DESTITUITION**

This research was especially concerned with documenting and analysing how policies of deterrence enacted upon arrival – as a key plank of the securitisation of migration – punish and socially exclude a population officially recognised as in need of humanitarian protection. The conflation of crime and migration creates social exclusion and an ‘illegalized global underclass’ (Aas 2011: 337). The women participants’ daily lived accounts of life in Malta reveal the reach of securitisation into the social, economic, and legal and administrative aspects of life on Malta. Diminished access to rights and entitlements form part of the social exclusion of transnational migrant subjects on Malta, which this study revealed to be gendered. Even when legally accepted into the EU, women were subject to secondary standards of health care, diluted legal status, gender discrimination in employment and racism, and were often drawn into the informal economy and therefore became vulnerable to exploitation. The participants’ women’s lived experiences of punishment and deterrence show how the securitisation of migration extends to every aspect of life in Malta for women. The significant outcomes reflect the impact of policies of deterrence: partial and piecemeal legal status; poverty and isolation; and deteriorating physical and mental health.

**Partial and piecemeal legal status**

The overwhelming majority of transnational migrant subjects who arrive in Malta and obtain humanitarian protection receive rights and entitlements that are both partial and piecemeal. With refugee status so rarely awarded, normative questions need to be asked such as whether refugee women have a real chance of accessing an adequate adjudication of their claims of persecution in Malta.

Complementary forms of protection, by far the most commonly awarded in Malta, equate to illusory legal protection. Diluted rights and entitlements in the EU context preclude family reunification and the right to work, in contrast to refugee status. This has particular consequences for women, the majority of whom had children they hoped to reunite with in the future. This ‘refugee protection’ framework sends contradictory messages about legal status to transnational migrant subjects: on the one hand, they receive a legal entitlement to stay in Malta; but, on the other, a Maltese government agency decides where and whether they can work, and how long they can stay in Malta. The policy also sends mixed messages to the broader Maltese community about the status of transnational migrant subjects, such that their identity as refugees is questioned and they are seen as occupying a lesser status. That this follows periods of detention adds to perceptions of the dangerousness of transnational migrant subjects (Brown & Pratt 2000), which further exacerbates their social exclusion. The governments of the EU exercise control over transnational migrant subjects and mediate
belonging through partial and piecemeal legal protections. For women, this framework further increases isolation and insecurity.

In Malta, there is a concerning correlation between the numbers of transnational migrant subjects who arrive seeking refugee protection, and the number awarded humanitarian protection. The smaller the number of transnational migrant subjects who arrive in Malta, the more likely it will be that they, and particularly women, will receive refugee status. This was the case in 2010 when the number of transnational migrant subject arrivals dropped significantly, and the number of those awarded refugee status rose dramatically. Between 2009 and 2010, successful applications for refugee status rose from 0.78 per cent to 12 per cent. However, those recognised for other humanitarian protection – subsidiary or THP – dropped from 65 per cent to 51 per cent (Hammarberg 2011). The number of successful application for asylum by women also rose to 27 per cent in 2010, up from 18 per cent in 2009. Many women participants in this study commented that they felt that too many women were now coming to Malta. The impact on refugee recognition rates of smaller numbers of arrivals colours in some of the detail in describing how transnational migrant subjects are forced to compete with each other for refugee protection. This notion of competition between recipients is reminiscent of Huysmans’s (2006) research on the crisis of the welfare state and the scapegoating of refugees and asylum seekers. Refugees become part of a political struggle whereby claims to asylum are forced to defer to publicly undisclosed matters of national interest. The law enforcement and NGO participants in this study suggested that the demand on Malta’s resources influenced the awarding of refugee protection. The significant numbers of people accepted for resettlement to the US confirm a political bias against recognising refugees within Malta’s refugee determination system. This research has observed that women stand to have their asylum claims successfully adjudicated in states other than Malta.

**Poverty and isolation**

This research identified that for women, poverty and isolation were consequences of the diluted nature of rights and entitlements in the Maltese context. The securitisation of migration created a perception that transnational migrant subjects were inferior to the host population, and this had a direct impact on the socioeconomic aspects of life in Malta. Complementary protection creates a hierarchy of rights among those who receive humanitarian protection (McAdam 2005) and the host population. Transnational migrant subjects cited occasions where they were treated as secondary or expected to defer to Maltese citizens. Husymans’s (2006) notion of cultural security was illustrated in the experience of one participant who was passed over for permanent employment in favour of a Maltese national. For other women participants in this study discrimination meant being prohibited from wearing their headscarf while in employment and even verbal harassment. This illustrates the implementation of punishment not only through policy at a government level but also through the practices of employers and the general public. Gendered discrimination in employment was reported by participants as pushing some into the informal economy, which further heightens vulnerability.
Diluted legal status contributes to perceptions of transnational migrant subjects as inferior, which has direct socioeconomic consequences.

Several other factors exacerbated isolation and poverty for women. First, the minimal government allowance paid to transnational migrant subjects narrowed the options for integration. Women who are primary carers for children have fewer opportunities to access the employment market and are therefore more reliant on government allowances. Women are more susceptible to poverty if adequate financial provision is not made. At 4 euros per day, the allowances provided by the Maltese Government are clearly inadequate. Second, isolation was compounded by the accommodation facilities provided for transnational migrant subjects. Transnational migrant subjects were clustered in isolated residential accommodation, far from work and social opportunities. The accommodation conditions were described by the participants as overcrowded and unhygienic with inadequate space to store basic personal items even when in Malta for a number of years. The NGO participants claimed that options for private accommodation were limited by racism. Third, the lack of adequate childcare furthers the sense of isolation and exclusion for transnational migrant women. This research observed many single mothers who were primary carers for children. A lack of childcare on Malta, coupled with a lack of recognition in the EU Receptions Conditions Directive, had a tangible impact on their ability to work and integrate in Malta.

**Deteriorating physical and mental health**

This study raises questions around the lack of an acceptable standard of healthcare for transnational migrant subjects residing in Malta, which has a particular impact on women. The participants felt that there was a considerable disparity between how asylum seekers and Maltese citizens are treated within the health system. In ‘vulnerability’ assessments to determine release from detention, those with visible vulnerabilities, which included pregnant or lactating women, might be favourably assessed initially but are poorly supported upon release from detention. Those with less visible vulnerabilities may be forced to remain in detention. Upon release, the health care needs of transnational migrant subjects were viewed as of secondary importance to those of Maltese citizens, enabled by an unclear policy on access to health care and the difficulties associated with transport to health care centres. Women are more susceptible to these system failures because of their particular health care needs around childbirth and pregnancy, especially for those women who have undergone female circumcision.

The research also identified that the mental health of transnational migrant subjects deteriorates the longer they stay in Malta and furthermore, that this was not being adequately addressed by the Maltese Government. The mental and physical health of those who arrive by boat deteriorates the longer they remain on the island as a consequence of poor living conditions and an uncertain future due to diluted legal protections. The authorities understood that mental health issues among the transnational migrant subject population were of concern, but insights regarding the prevalence of mental health issues were not being matched by a softening of securitisation of migration policy, instead being addressed by a push to pursue ‘repatriation procedures’.
This research has shown that for transnational migrant subjects, 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 primary carers, often isolated from family or social networks, women face gendered challenges in obtaining employment and securing economic protection. 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 perceptibly more humane.

**TENSION FOUR: MANDATORY DETENTION AS AN INSTRUMENT OF PUNISHMENT UPON ARRIVAL**

The transnational migrant subjects interviewed in this study experienced detention as punishment. Women reported that the detention centres in Malta were better than those in Libya – as one participant described, at least you weren't 'beaten'. Nevertheless, women experienced detention centres as 'uncomfortable'. The detention centres were built to fit a male model, and until recently were not gender segregated. The NGO participants in this study said that there was sexual violence against women in detention and a demonstrable deterioration in the mental health of those detained. The women interviewed 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 means of being transferred to another, albeit relatively improved, form of containment. Management of reproductive status sees many women become primary caregivers of children.

Mandatory detention is a policy based on the old penology of deterrence and the threat of punishment, which in practice fails to achieve its stated aim but rather, has other detrimental consequences for transnational migrant subjects. As argued by Garland (1996), a range of underlying factors drives the commission of criminalised acts and so a legal threat of punishment is meaningless. This research has similarly demonstrated that the legal threat of punishment is a blunt instrument in stopping transnational migrant subjects from arriving in southern EU Member States. Factors such as the security risk in Somalia, combined with the possibility of legal status, safety, work opportunities and family reunification in the EU, can be seen as overriding the legal threat of punishment through detention in the decision-making of border-crossing women. In maintaining its policy position, the government is demonstrating its lack of understanding of the decision-making of transnational migrant subjects, and the nature of 'illegal' migration. Moreover, the Maltese Government is ignoring the discriminatory nature of global mobility that for many makes irregular entry the only way of seeking asylum in the EU.

Individual members of law enforcement agencies, however, acknowledged that the practice of mandatory detention was not appropriate for people arriving from Somalia, who generally have a high chance of receiving refugee protection. In addition, in Louled Massoud, the European Court of Human Rights questioned the necessity of mandatory detention in Malta given that its geography as a small
island lends itself to containment. In any case, Malta has a maximum limit of 12 months in detention if one has applied for asylum and 18 months if rejected. It is therefore likely that transnational migrant subjects will eventually be released from detention, in which case detaining migrants in unhygienic, overcrowded and punishing conditions of detention may be regarded as counterproductive or at least unnecessary. The lack of readmission agreements between Malta and Somalia is such that, even if rejected, people cannot be repatriated to Somalia. Transnational migrant subjects experience detention as punishment for arriving irregularly by boat. This ought to be legally recognised as constituting punishment and is patently a direct contravention of Article 31 of the 1951 Refugee Convention.

**TENSION FIVE: DISRUPTING ONWARD MIGRATION AND THE POTENTIAL FOR REFOULEMENT**

**Stratification of onward migration for humanitarian protection recipients**

The securitisation of migration stratifies access to onward migration from Malta in ways that have gendered dimensions. Receipt of humanitarian protection entitles transnational migrant subjects to be eligible for individual selection into programs that will provide relocation to another Member State of the EU or to the US under the Refugee Resettlement Program. Malta has become a borderland from which other states can select individual candidates who match their key criteria. This research has established that the ‘ideal profile’ for each state either inflates or deflates women’s chances of selection. In the EU Relocation Program, larger intakes place priority on workers: identified as single men with English or other skills that will enable them to integrate and join the workforce. For these intakes, women, particularly those with children, were perceived as too burdensome. Women with carer responsibilities were deemed a poor match for the ‘ideal profile’. Conversely, smaller intakes may indeed prioritise women if they were perceived as being of heightened vulnerability. Similarly, the participants stated that the US Resettlement Program tended to select women who are single mothers with children or who have a disability. These programs operate in a way that speaks to global mobility being stratified at the Maltese border. After people have made the journey into the EU factors such as gender, ability to speak English, carer responsibilities and perceived potential for integration form the primary factors that determine access to state-assisted onward migration. This research has demonstrated how women are alternatively prioritised and deprioritised under these programs.

**Tied to Malta – the elasticity of the Maltese border in containing transnational migrant subjects**

The Dublin II Regulation operates to tie transnational migrant subjects to Malta as their country of first arrival into the EU. The interviews with women in this research have shown how the Dublin II Regulation affects their daily lives by disrupting their onward migration and punishing them upon their return in Malta. In this study women’s onward migration was found to be driven primarily by the desire to reunite with family in other Member States of the EU in which they experienced better conditions of reception than in Malta. Women make strategic decisions about their protection needs, which are better met elsewhere, in countries where family reunification, a wider Somali network, family and
childcare are all accessible. However, many women are often forced back to Malta and punished upon their return. The Dublin II Regulation meant that many women in this study who had travelled to other Member States, some had even given birth in other Member States, were forcibly returned to Malta. They knew the conditions were better in other EU Member States: ‘Sweden is much better, even Greece is better than this’ (Lamlya); and ‘I have been to other European cities and they are not as racist as here’ (Blota). These women had direct experience of other Member State’s reception conditions and they felt that harmonisation had not resulted in the same reception conditions across different Member States. Those who return as a result of the operation of Dublin II Regulation have their allowances reduced and face delays in their applications for humanitarian protection in Malta, and relocation to other parts of the EU or resettlement to the United States. Border control enacted through the operation of Dublin II usurps opportunities for protection elsewhere, by returning women to Malta and to a cycle of containment and punishment. Women thus have their onward migration decisions undermined by being returned to Malta under the Dublin II Regulation.

This research considers the gendered impact of the Dublin II Regulation from the perspective of transnational migrant subjects arriving in the Member States of the EU that line its external border. Schuster (2011b) has conducted research on Afghan males in Paris, and argues that Dublin II is turning refugees who arrive in Member States along the external border into undocumented migrants. It would be useful to document and analyse the experiences of women who have travelled through Malta and arrive in other EU Member States to analyse the gendered dimensions of Dublin II in these other states – this is a research question for a future project.

‘Stuck’

Somali women who are denied refugee protection are effectively stuck on Malta and are unable to move either forwards or backwards. The lack of readmission possibilities with Somalia means they cannot be returned to their country of origin. ‘Stuck’ in Malta without work rights or an adequate government allowance, these women are driven into the informal economy and exposed to exploitation and risk. Rejection in the Maltese context is driving people to find illicit ways to live in or seek exit from Malta. Women who leave through extra-legal pathways are brought within the realm of traditional criminal justice systems – reflective of ‘crimmigration law’ in the Maltese context (Stumpf 2006). Transnational migrant subjects are thus imprisoned for trying to leave Malta illegally – a practice that seems a flagrant breach of refugee protection and basic human rights principles. Article 13(2) of the Universal Declaration of Human Rights for example, states that ‘everyone has the right to leave any country’. Nevertheless, transnational migrant subjects are brought before criminal courts and receive sentences that complete the criminalisation of their migration. It is revealing that one of the women I spoke with in this situation said ‘I don’t have a future. I am in a worse situation now than in Somalia’ (Nadifa).

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Refugee protection in the EU continues to provide leverage to transnational migrant subjects to enter the EU and reside there legally. However, the securitisation of migration fosters the exclusion of the transnational migrant population and fails to achieve the desired aim of deterrence. Instead, it punishes those who arrive irregularly and contributes to the deteriorating health, destitution and isolation of transnational migrant subjects. The securitisation of migration at the North African site reinforces gender inequalities and exposes women to increased violence, and increases the cost of their migration to the EU. Global mobility is differentiated by gender at each specific site, and different strategies are used to cross and navigate different borders. Women are subject to greater harm and risk in detention and en route compared to their male counterparts. The securitisation of migration framework has transformed refugee protection so that border control is continually enacted upon asylum seekers and refugees throughout their journey from Somalia and deep into the EU.

This study has shown that EU policy adheres to the country of first asylum policy without adequate resourcing of those countries along the border to ensure appropriate reception standards are met. This research has also shown how the Dublin II Regulation places great pressure on countries at the external border of the EU to contain transnational migrant subjects. In Malta the resources needed to provide adequate reception conditions are not in place. Law enforcement agency and NGO participants expressed the view that the system is pushed to its limit, and the impact is being felt by the transnational migrant subjects who are forced to live in overcrowded and unhygienic conditions in Malta. When the numbers of transnational migrant subjects arriving in Malta have decreased, more people received asylum through Malta’s processing framework. This lends support to the notion that refugee determination is occurring within a political context that is cognisant of Malta’s inability to host a large number of refugees and those with humanitarian protection for reason of its size and population density. These factors can be seen to compromise the kinds of refugee protection available to asylum seekers in Malta and are grounds for suggesting that the policy of first asylum is resulting in reduced protection for asylum seekers and the prospect of refoulement. Asylum seekers from Somalia, for whom the current fragile security situation means they cannot be refouled, face containment in Malta for the foreseeable future.

Listening to the experiences of the 26 women who have successfully travelled from Somalia or Ethiopia to Malta, directly exposes the paradox between the refugee protection framework and the securitisation of migration. This research examines how these tensions are evident in the everyday experiences of women across exit, transit, arrival in Malta and onward migration from Malta. The narratives provided by participants detail the myriad of ways in which women resist the undermining of their agency and mobility. The dominant discourses on asylum have a very tenuous connection to the lived realities of seeking asylum (Mountz 2010). This research attempts to wrestle the sensationalised debate around asylum seekers back to the real issues evident from the lived accounts of those most acutely affected – transnational migrant subjects themselves.
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APPENDICES

APPENDIX A: SCHEDULE OF QUESTIONS FOR PARTICIPANTS

Refugee Women

Topic One: Arrival to Malta and decision-making processes

1. For how long have you been in Malta, and when did you receive refugee status?
2. Why did you decide to come to Malta?

Topic Two: Experiences in daily life in Malta - employment, education, civic participation, healthcare; appraisal of other stakeholder groups and services.

1. What are some of the challenges you have had adjusting to life in Malta?
2. What have been the most positive aspects of life in Malta?
3. Are you employed and what were your experiences of finding work in Malta?
4. What services do you access? What have been the challenges and benefits of using these services?

Topic Three: Settlement and ongoing migration

1. Do you intend on living in Malta over the intermediate or long term? What factors may influence your decision?
2. Why would you choose to stay in Malta? What factors would influence you leaving?

Interview List of Topics for Government Agencies:

Topic One: Contact with settled migrants

1. What kind of contact does your agency have with refugee women?
2. What interactions do you have with refugee women?
3. What are the challenges in meeting the needs of refugee women?
4. What are some of the challenges in managing migration in Malta?
5. What have been the key issues you have noticed with regards to refugee women in Malta?
**Topic Two:** Resources since joining the European Union – shifts and trends?

1. How has the role and function of your organisation changed since joining the EU?

2. What have been the benefits and challenges in relation to migration issues since joining the EU?

**Topic Three:** Future challenges

1. What are the future challenges for your organisation in terms of migration management?

Interview List of Topics for NGOs:

**Topic One:** Contact with refugee women?

2. What services do you provide to refugee women?

3. What is the demand and where is the need for refugee women?

**Topic Two:** Resources since joining the European Union – shifts and trends?

1. How has the services delivered by your organisation changed since joining the European Union?

2. What gaps in service delivery do you perceive exist especially for refugee women?

**Topic Three:** Future challenges

1. What challenges do you think your organisation faces into the future?

**APPENDIX B: REFERRAL CONTACT FOR PARTICIPANTS - PERSPECTIVES OF STAKEHOLDER CLIENT GROUPS IN MIGRATION TO MALTA**

**General Counselling Services:**

- Emigrants Commission - 222644
- Foundation for Social Welfare Services – Appogg - 22959000
- EU-wide Emotional Support Helpline - 116123

**Refugee Specific Counselling:**

- Jesuit Refugee Service - 21442751