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# 'Less than human': the detention of irregular immigrants in Malta

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*Abstract:* The treatment of irregular migrants in Malta is problematic from a human rights perspective, for it contravenes the principle of universalism that is intrinsic to human rights philosophy. Malta is unusual among states in that it imposes mandatory detention on such migrants, including asylum seekers. Based on a reading of foundational documents of the modern human rights movement, especially the Universal Declaration of Human Rights, the article argues that the principle of human dignity underlies the concept of human rights, but that the bypassing of this principle enables the Maltese government to continue its detention policies while claiming to uphold human rights. It is an approach contested by NGOs in this area, which point to the dehumanising effects of detention on migrants. It is not just the appalling conditions in which migrants are held that renders their lives miserable, but the dehumanisation produced by detention itself.

*Keywords:* asylum seekers, human dignity, human rights, immigration policy, irregular migrants, Malta, migrant detention centres, UDHR

In an unequal and globalised world, no issue exposes more starkly the fundamental contradictions between different views of what constitutes the concept of human rights than that of the policies and practices states have produced to

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contain and manage irregular migration. Using Malta as a case study, I argue that differing views of whether the concept of human dignity underlies such rights result in widely differing approaches to the ways in which human rights are said to be upheld. The displacement of human dignity from the core of human rights produces very different practices of human rights.

To sketch out some preliminary background, Malta, a small island state in the Mediterranean Sea, is the southernmost European Union member state and is located between Libya and Italy. Since 2002, it has seen a marked increase in the number of irregular immigrants, the vast majority of whom arrive by boat or are intercepted at sea, and would have generally left from Libya, even though they originate from forty-seven different countries.<sup>1</sup> The flow of irregular migrants has been more or less consistent, approximately 2,000 a year, reaching a peak in 2008 with 2,775 migrants.<sup>2</sup> This is a considerable number for a country with a population of approximately 417,000 distributed over an area of just 316km<sup>2</sup>.<sup>3</sup>

Almost all irregular immigrants to Malta are indiscriminately detained on arrival for up to eighteen months in deplorable conditions – unsanitary and overcrowded. There are three migrant detention centres on the main island: Lyster Barracks, Ta' Kandja and Safi Barracks.<sup>4</sup> At the end of December 2009, they had an estimated capacity of 1,900.<sup>5</sup> If additional space is needed, migrants can also be detained in correctional facilities and police headquarters established by the authorities.<sup>6</sup> They are run by Detention Services, which is mostly made up of personnel seconded by the Police Force or the Armed Forces of Malta.

This is made legally possible by the Immigration Act of 1970,<sup>7</sup> which states that all prohibited immigrants issued with a removal order are to be placed in detention until they can be removed from Malta (Articles 5 and 14 of the Immigration Act).<sup>8</sup> The Immigration Act regulates matters related to entry, visa regime and border control, as well as the granting of temporary and permanent residence permits and the granting of permission for foreigners to work. In 2002, Malta decriminalised the entrance without leave of its territory, but retained the detention of all migrants upon arrival.

Among the immigrants detained are also those who apply for asylum. Indeed, UNHCR reports that between 2002 and 2010, 84 per cent of people arriving by sea in Malta sought asylum.<sup>9</sup> Malta is signatory to the 1951 Refugee Convention and 1967 Additional Protocol, and lifted its geographical limitation in 2001 when the Maltese Refugee Act came into force.<sup>10</sup> In recent years, UNHCR has consistently ranked Malta high on the world list of asylum applications per inhabitants. Between 2004 and 2008 Malta was jointly ranked with Cyprus first in the world.<sup>11</sup>

The study that follows is based on ethnographic fieldwork, including a number of in-depth interviews and participant-observer research that I carried out in Malta during 2008 and 2009. In preceding years, while working for numerous human rights institutions and non-governmental organisations (NGOs), I observed increasingly how a state that had once had a reasonably good

reputation for upholding human rights became increasingly punitive towards those attempting to enter its territory. I argue here that what is fundamental to, and demonstrated by, this change is that the concept of human dignity has been displaced in government policy as the founding principle of human rights, with implications for the practice of such rights.

Although the situation was not optimal before,<sup>12</sup> from 2002 onwards the circumstances of immigrants in detention centres became ever more desperate. Some just could not take it and escaped. Others needed psychiatric treatment and were admitted to hospital, only to be segregated in the Irregular Immigrants' Ward at Mount Carmel Psychiatric Hospital. This former maximum security facility, described as the ward with the worst living conditions, had previously been closed down following years of public pressure, only to be reopened for migrants.<sup>13</sup> Altogether life in the overcrowded rundown centres was terrible. The confined space with chicken wire all around drove even the strongest characters into disillusioned apathy after a few months. Detention became a profoundly dehumanising experience, which, as the following Moroccan immigrant comments, leaves an indelible mark on the migrants:

Detention has never left me. I was treated like a dog, but I also became a dog, an animal. And when you become an animal once, you are ashamed for life.<sup>14</sup>

Detention, whose psychological damage is so powerfully described above, serves to exemplify the division between two main schools of thought, demonstrated by government, on the one hand, and NGOs, on the other, which produce different interpretations of human rights. The ill-treatment of immigrants in detention centres is not restricted to detention *per se*, but is symptomatic of the way irregular immigrants are perceived in Malta. In addition detention centres are, not least due to their confined space, the locations in which dehumanising processes are most shockingly visible.

For NGO workers, the most powerful motivating factor is the concept of human dignity. Indeed, their analysis of the practices of detention is that they are only possible because immigrants are perceived as 'less than human'. One NGO worker I interviewed revealed her indignation:

When I speak to people who are taking decisions about migrants at different levels, mostly my contact is about detention issues, I can't help concluding that in addition to one massive stereotyping – all liars, all abusers – there's also, somehow, they are perceived as less than human, and that is why, even talking about rights is almost – you are almost being '*qisu wiċċek tost'* [ungrateful] that you are talking about rights. But if I truly believe that he's a human being how can I ever imply that he shouldn't be talking about rights, that he should be grateful for what he gets. If I believe that he's as human as me, with as much rights as me, why would I lock him up and in those conditions?<sup>15</sup>

Ultimately it is precisely this perception of immigrants as 'less than human' that has made migrant detention possible. The policy and conditions of detention are the most observable factors conditioning the lives of irregular migrants in Malta. Detention also has a direct influence on the asylum-seeking process, since irregular immigrants who apply for asylum go through the whole process and, if necessary, the appeal, whilst living in these detention centres. The government, contrary to its claims, is not embracing a human rights approach by allowing a situation that has become dehumanising. In addition, the risk of a direct and significant 'spillover' from the creation of an institution that encourages dehumanising practices shows how the policy of detention is short-sighted.

Two paradigms of human rights are thrown into relief in Malta; two schools of thought that differ over the concept and role of human dignity in the practice of human rights. The one sees human dignity as merely an inspirational concept, the other holds that the concept of human dignity has a normative functional value at the heart of such rights. The contrasting claims of the government and the NGOs on whether the human rights of irregular immigrants have been violated has produced a 'human rights stalemate'. I argue that the catastrophic effects of detention on migrants, who are treated as, and become, 'less than human', show that the human rights paradigm the government locates itself in is problematic. Migrant detention is a clear example of a direct affront to human dignity and, as such, poses an unsurpassable barrier to the nurturing of a human rights culture.

### **The 'human' in human rights: the case for human dignity**

Is there any need to 'make a case for human dignity'? To the extent that human rights theorists expose different understandings of the function that the concept of human dignity plays in the human rights movement, there is. Although differences might appear subtle, I argue that the issue of human dignity within human rights philosophy is so fundamental that it has created two very distinct movements. The implications in practice are radical and explain why situations that are not conducive to ensuring respect for the human dignity of immigrants do paradoxically receive support from some parts of the human rights system.

What is understood by human dignity in contemporary times? The philosopher Oliver Sensen sums up the contemporary conception of dignity as:

Today dignity is widely conceived of as an inherent value property on the basis of which one can claim rights from others: one has rights because of one's intrinsic and objective preciousness. In justifying human rights, the good (dignity) is prior to a principle stating what is right; and human rights as entitlements – which are justified by the good – are prior to the duties of the agent.<sup>16</sup>

This definition arises out of the usage of human dignity in UN documents where it is clearly stated that human dignity is the justification for human rights. For example: 'Recognizing that these rights derive from the inherent dignity of the human person...'<sup>17</sup>

In a nutshell, although human dignity can be described without reference to human rights, the prominence and significance of human dignity in contemporary settings is intrinsically tied to the modern human rights movement. This new human rights paradigm has made human rights the easiest way to make claims for human dignity. What kind of different 'understandings' can arise from such a simple explanation? A debate during the negotiations on Article 1 of the UDHR: 'All human beings are born free and equal in dignity and rights...' serves to highlight the two different positions. The following is excerpted from Mary Ann Glendon's book of the proceedings of the discussion, which took a total of six days to get through the Third Committee:

C.T. Te Water [the South African representative] produced a brief show of solidarity among the rest of the delegates when he moved to replace 'dignity and rights' with 'fundamental rights and freedoms.' ... Nor, he insisted, was there any universal standard of dignity. Te Water's motion 'so electrified the meeting,' Humprey wrote, that everyone there, including Mrs Roosevelt and Pavlov, 'united in protest.' Malik reminded Te Water that the word *dignity* had been inserted in the UN Charter on the suggestion of Field Marshal Jan Smuts, who had led the South African delegation to the San Francisco conference. The next day Te Water stated that he wished to clarify his government's position: The Declaration ought to be devoted to statements of fundamental rights, and since 'dignity' was not a 'right,' South Africa questioned the advisability of the reference to 'dignity' in Article 1.

Mrs Roosevelt, when her turn came, said that the word *dignity* had been considered carefully by the Human Rights Commission, which had included it in order to emphasize that every human being is worthy of respect. In the scheme of the Declaration, Article 1 did not refer to specific rights because it was meant to explain why human beings have rights to begin with.<sup>18</sup>

The central role of human dignity to human rights was not negotiable, in spite of Te Water's and his supporters' evident resistance. The behaviour of Mrs Roosevelt and Malik, who refused to enter into a discussion on the concept of human dignity itself, would suggest an assumption on the part of the drafters of the non-negotiable role of human dignity. My argument supports this assumption, on the basis that it is the concept of human dignity that gives a moral bearing to the human rights movement, making it a truly humanist movement. When human dignity loses its place at the core, human rights become just another set of discussed and agreed-to standards between states.

Te Water's proposal to limit the scope of human dignity to that of an inspirational concept by leaving it only in the Preamble, would have closed the opportunity to use human dignity in a 'normative' way. If human dignity is seen as the benchmark of behaviour and actions that are morally unacceptable, below which humanity is at risk, then human dignity can be viewed as a normative concept. It is not clear if the drafters had this in mind; however, the inclusion of human dignity as an article in its own right makes sense when seen in this light. In fact, the term a 'violation of human dignity' has been used officially in the 1993 Vienna Conference on Human Rights to describe extreme situations in which human rights are not upheld. It was enshrined in Article 25 of the Vienna Declaration, which states: 'The World Declaration on Human Rights of 1993 affirms that extreme poverty and social exclusion constitute a violation of human dignity'.<sup>19</sup>

Human dignity is a 'normative' principle of a particular type since it can only be endowed with meaning within a particular setting. In extreme situations the concept of human dignity can be a useful analytical tool to help us understand if and what irreducible standards have been surpassed in a given situation. Putting it another way, human dignity can be seen as that which allows what is unacceptable to emerge. It is about giving a voice to the vulnerable and victims, those who need it most. As Jeff Malpas and Norelle Lickiss say:

the voices of all of those for whom the loss of dignity constitutes a real and immediate threat – the voices, for instance, of asylum seekers in leaky boats or in detention centres, persons in situations of destitution, individuals whose lives and communities have been uprooted by the cataclysms of nature, those in captivity, those on death row, women trafficked as commodities, mothers watching children dying of hunger, abused child soldiers, those who are the victims of malice or culpable ineptitude, those deemed disposable or unworthy of life, those whose powerlessness leaves them prey to the strong ... Dignity remains a vital and significant concept if for no other reason than that it directs our attention to just these voices, insisting that they be heard, that they be recognized and that they be responded to.<sup>20</sup>

In brief, the negotiations of the UDHR reveal a schism between two groups: those for whom human dignity was nothing more than an inspirational concept, and those who envisaged that, apart from inspirational qualities, the concept must also carry a functional and normative value. As a normative concept it could also be used to benchmark treatments that are morally unacceptable and, as will be seen subsequently, the application of human dignity as a benchmark to migrant detention in Malta yields a clear message that the practice is morally unacceptable.

### **The government vs NGOs: where are human rights?**

Two clear and distinct human rights discourses have developed within the immigration field in Malta. On the one hand, a number of international and

local organisations claim a violation of human rights on various fronts and call for abolition of the policy of blanket detention for all migrants, in particular asylum seekers. On the other hand, the government, by positing its interpretation of human rights law, claims that detention does not constitute a violation of human rights. The latter position is reinforced by the Maltese law courts and to some degree by the European Court of Human Rights (ECHR).

*The position of non-state actors: a human rights discourse*

This discourse is closest to the UDHR original drafters' 'paradigm' in which the concept of human dignity is understood as being functionally important. The UDHR paradigm yields a strictly person-centred approach where situations are scrutinised and judged according to the effects they have on individuals. Independent and non-governmental organisations are the main proponents of this discourse.

Non-state actors' criticism of Malta's detention policy has been forceful. The most common critique found in their reports focuses on the deprivation of liberty of nearly all irregular immigrants and the alleged arbitrariness of detention, as well as the fact that the positive developments that have been implemented are not set in law, and so can easily be changed or repealed. In just one example, a press release issued by the UN Working Group on Arbitrary Detention panned the whole system and stated that:

The detention regime [that] immigrants in an irregular situation are subjected to, falls far short of international human rights law.<sup>21</sup>

Another series of complaints that have been generated by human rights organisations are those regarding the conditions of detention. The UN Working Group on Arbitrary Detention expressed shock at the abysmal conditions in detention centres. The conditions of detention are:

appalling to the extent that the health, including the mental health, of the detainees is affected. This situation, in turn, affects their ability to properly understand their rights and to follow the legal proceedings related to them ... The sub-standard closed centres of Safi and Lyster Barracks are overcrowded. At Lyster Barracks, families are not separated from men, women, including pregnant and nursing mothers, and children, including unaccompanied minors. Although the Government applies a fast track procedure for the release of vulnerable groups in administrative detention, the procedures may take several months and be in vain for those who are considered a health risk. Many dwell in tents and the Working Group notes with serious concern that 59 inmates do not even find a place to sleep in these tents at present.<sup>22</sup>

Conditions inside the migrant detention centres, despite various positive developments over the years, have long been criticised on the following grounds:

- a the (almost) permanent overcrowding;
- b an almost complete lack of privacy (both in sleeping/living areas and in showers, etc);
- c no separation of female from male immigrants;
- d no protection from abuse from staff or other immigrants, especially for female immigrants;
- e unhygienic conditions;<sup>23</sup>
- f difficulties accessing basic healthcare;<sup>24</sup>
- g mental health considerations;<sup>25</sup>
- h the denial of information about rights as potential asylum seekers.<sup>26</sup>

The same reports drawn on above also include a series of recommendations and proposals including minimising the length of detention to the least possible period; improving the conditions inside detention centres; speeding up the asylum review; and empowering immigrants by giving access to legal channels. They also document developments in the field: legislation, infrastructure, conditions within detention centres, and access to health. Notwithstanding this, the overall situation still falls short of required standards as has also been highlighted by the report, *Becoming Vulnerable in Detention*.<sup>27</sup>

In brief, the overall message is clear: the policy and practice of detention falls below acceptable standards as it is inhumane. According to these non-state actors, the current practice of detaining all irregular immigrants, including asylum seekers, constitutes a violation of human rights. In addition, the conditions of detention in themselves need to be improved.

#### *The other human rights discourse*

This is adopted primarily by the government and law courts. It is closer to Te Water's approach in that human rights are perceived from a state-centric point of view and it gives less centrality to the concept of human dignity. More importance is thus given to a positivistic interpretation of human rights law and state interests.

The government of Malta defends its practices and policies by taking a legalistic stand to show that it is not violating international human rights standards. Bringing to the case the particular issues of the country's size, population density and inability to manage or provide any long-term solutions for irregular migrants, the government argues that its actions are fitted to the country's capacity and it therefore lives up to its international obligations. The position of the government is clear and has been consistent throughout the years: Malta cannot cope with the enormity (or potential enormity) of irregular immigration and therefore needs to implement a mandatory policy of detention to manage the situation. This

rationale underpins national laws, and so it does not come as a complete surprise that court judgements have not ruled against any aspects of detention. The following excerpt from the Prime Minister's address to the United Nations General Assembly is a good example of Malta's stance:

the small size of Malta, our financial and human resources make it extremely difficult to cope with such a huge number of these unfortunate people to be accommodated in Malta ... Notwithstanding the severe difficulties faced by Malta, we continue to honour our international obligations *vis-à-vis* genuine refugees and persons qualifying for humanitarian protection. Malta has featured as one of the countries, in proportion to its size and population, with the highest number of awards to asylum-seekers ... For years we have insisted on measures of international solidarity, beginning with effective action at EU level ... Malta has always dealt with these situations with great responsibility, humanity and benevolence paying due respect to every human being without exception and will continue to do so. At the same time, the problem of illegal immigration is an international phenomenon driven by external factors which cannot always be prevented or even mitigated by the countries affected by this problem ... My Government hopes that other countries would come forward to assist in alleviating the burden which Malta carries - a burden so acutely disproportionate to Malta's population, land size and population density.<sup>28</sup>

The government's position on detention policy has been widely supported by the Maltese Courts. Take, for example, three cases - two of asylum seekers and one of a rejected asylum seeker - that invoked Article 409A of the Criminal Code.<sup>29</sup> This Article provides any detainee with the possibility of applying to the Magistrate's Court to challenge the lawfulness of detention. If the court chooses to release the applicant, the Attorney General may apply for the person's re-arrest if he is of the opinion that the continued arrest was founded on any provision of the code or other law.<sup>30</sup> All three cases were rejected as the Court held that since the Immigration Act authorises detention, and imposes no limit on the amount of time an immigrant may spend in detention, such detention is lawful. According to the Court, the scope of Article 409A does not include an examination of circumstances of the lawfulness of detention, such as whether the detention itself violates the individual's fundamental human rights.

Other attempts challenged the lawfulness of detention in terms of Article 34 of the Constitution of Malta (which is also Article 5 of the ECHR) that protects from arbitrary arrest or detention. In *Essa Maneh et. v. Commissioner of Police*, the Court justified detention on the basis of national security concerns as the Court highlighted the need to 'avoid a flood of "irregular" people running around in Malta'.<sup>31</sup> In the interpretation of the law, overall, the Maltese judges and magistrates have reproduced, and thus further legitimised, the government's line of argument.

There has been one exception in the case of *Barboush v. Commissioner of Police*. Karim Barboush, an Iraqi asylum seeker, had been detained for fourteen months. On 25 October 2004, Magistrate Vella ruled that, although it was understandable that an illegal immigrant would be detained on arrival at Malta, the detention of Barboush went beyond the limits of what was considered reasonable and lawful. The Act stipulates that applications for refugee status are to be dealt with as quickly as possible and within a relatively reasonable time.<sup>32</sup> It is worth reproducing a few questions Magistrate Vella posed when reading out the sentence:

How could one accept that a person, with fundamental human rights like anybody else, is held in detention for 14 months when there is no disposition in the law that requests the arrest? How could one accept that the Board of Appeal, that determines refugee status, was not composed for months so that applicants were left waiting in detention for nothing ... The court feels that 14 months was not a short or reasonable time in the circumstances. The court understands and appreciates the efforts and limited resources with which the authorities work and is in no way condemning anyone's actions but the fact is that situations where a person is denied his freedom arbitrarily and unreasonably cannot be accepted.<sup>33</sup>

Are we to expect that these people, who have fundamental human rights like everybody else, should remain in detention until someone remembers to constitute the Board of Appeal, hear the applicants' case and decide it?<sup>34</sup>

Magistrate Vella's person-centred approach contrasts sharply with the state-centric approach undertaken by the government and the rigid positivistic interpretation of the law by the courts. His comments, rightly, make us question the fairness of the phenomenon of detention. Three issues are brought out in his argumentation: a) that the lack of resources and lack of administration do not constitute 'reasonable' and so the government is not acting within its legal right (Immigration Act) to detain people arbitrarily; b) the change of status of the immigrant to an asylum seeker needs to be taken into consideration; c) freedom is a fundamental human right, and a person cannot be kept in detention due to maladministration issues. Magistrate Vella's ruling was revoked by the Criminal Court on procedural grounds and it was ordered that the case be heard again. This is typical of an approach in which human dignity is not the primary consideration.

In brief, the position adopted by the government and largely reinforced by the law courts is dictated by a strict interpretation of human rights law. The end result is radically opposed to that undertaken by non-state actors who claim, as seen above, that violations of human rights of irregular immigrants are ongoing. This also has significantly different implications for the state, which is primarily

responsible for safeguarding the human rights of all people within its territory. Non-state actors claim that the state should be held accountable. Whereas the government's arguments, supported by the law courts, absolve the state from any responsibility of a human rights violation for a situation that it claims it is not equipped to handle.

On the one hand, one can say that the human rights system is 'working' and has made a difference by calling the government to account for the ill-treatment of irregular immigrants in Malta. On the other hand, it can be equally argued that, in spite of the activity spurred by the human rights system, it has not been effective enough because irregular immigrants in Malta have been and are still being subjected to a dehumanising experience. Ironically this 'ineffectiveness' is justified by an iron wall of international human rights law and its interpretation.

### **Dehumanising detention: the reality that challenges the government's position**

Migrant detention in Malta is officially a policy embarked on to manage the administrative aspects of irregular migration: from asylum applications, to health checks, to removals. It is an indirect result of the enactment of several EU laws and regulations that are part of the EU *acquis*. These laws have served to bring Malta's legal framework in line with international human rights standards, intended, in theory, to provide greater protection to asylum seekers. In practice, the phenomenon of detention in Malta is a complex institutional set-up designed to facilitate the removal of people without a permit to stay and accommodate those immigrants whose removal order is suspended, pending a decision on their asylum applications. Immigrants emerge from this experience claiming that they feel 'less than human'. Detaining people for a short and reasonable period of time in decent conditions for administrative reasons might be considered justifiable. The dehumanising practices that arise as a consequence of detention are, however, much more difficult to justify as acceptable.

What is the effect of detention on immigrants? During my fieldwork, I wanted to understand how immigrants articulated their experience of detention. In a way I also wanted some reassurance that I was not projecting my own horror and shock at the ongoing practices and policy of detention. I asked an Eritrean immigrant during one of our conversations what he felt was the worst thing about detention. Having just spent months reviewing human rights reports on migrant detention in Malta, part of me was expecting: the overcrowding, the food – which everyone complains about – or the stinky toilets getting blocked every other day, or the unhygienic showers. Following a pregnant moment of silence, which I now recognise as typical, however long after their release from detention you ask immigrants about their experience, he replied:

It isn't easy to be in a situation that kills the internal soul.<sup>35</sup>

This is what I set out to understand in an attempt to make sense of the two contradictory discourses of human rights. Using the concept of human dignity as a lens, I asked: in what way is detention in Malta a situation that 'kills the internal soul'? A Congolese immigrant, who spent over eighteen months in detention and whose asylum application failed, shed more light on this. He described his experience of detention in Malta, making the characteristic analogy with animals, as 'dehumanising'. He said:

Detention dehumanizes the human being. The detainee is reduced to the state of an animal. One wakes up, eats, sleeps, wakes up ... as in a stable. What is the difference between cows in a stable and an inmate at Safi Barracks? The cow sleeps, the inmate sleeps, the cow is fed, the inmate is fed, the cow goes out for a few minutes under the supervision of its master, the detainee also goes out into the courtyard for a few minutes, under the surveillance of the soldiers.<sup>36</sup>

The sense of emptiness and loss of meaning show part of the pain of going through a dehumanising experience. The gravity of the experience is expressed by the continual invocation of God. An often heard phrase among West Africans is: 'it is only by the Grace of God that we can get over/forget detention'.<sup>37</sup> The same Congolese migrant expressed his wish that the Maltese understand that migrants' suffering starts before detention and it is compassion that they seek on their arrival in Malta. It is interesting to note that the Congolese migrant chose to present detention as an issue of justice. Justice here is used in the broader sense of 'fairness', but it also alludes to a common perception by immigrants that detention is a 'punishment'. He says:

The victims of this detention have no other consolation except for their tears. All these people who were abused, bullied and maltreated, and all those who continue to be abused, bullied and maltreated because they fled their respective countries are the forgotten members of our society. They escaped from the frying pan into the fire. To experience the bullying misery of detention, one must have been there and lived through it. It's like I said one day to the judge who was in charge of the enquiry regarding the suppression of the demonstrations carried out by detainees in Safi Barracks: 'Coming to Malta, we committed the same stupid mistake as the crocodile who was walking in the bush one day, when he suddenly saw that it was going to rain, so he rushed into the river to escape the rain. We were trying to escape abuse and violations of human rights, but in Malta we found out that these were not milder here than in our countries! And the big question will always remain unanswered: Should we really have fled?'<sup>38</sup>

This explains why the effect on the detainees is not simply one of frustration at the bad conditions, or lack of liberty, but a delivery of subjugation and humiliation that together converge into a dehumanising experience. The following is a quote from my own field notes which helps to shed light on how I came to this conclusion:

I learnt more about the effects of detention on two separate occasions when I met with the managers of the Hal Far Open Centre and the Marsa Open Centre. Both gave me a tour of the centres they were responsible for. I noticed that as they were taking me around both took on a 'monitoring' role; and their gaze would linger on any activity between migrants in the centre, no doubt registering who was befriending whom, and so on. In almost identical automatic gestures, both continuously drew my attention and commented non-stop on new residents. These migrants, just released from detention, walked with their heads bent, huddled in groups and when not looking furtively over their shoulders they had a sheepish, almost empty, fixed gaze. To show me how 'slow' the new immigrants were, one of the managers in a joking, almost jeering move, shouted at the top of his voice 'Good morning!' to a group of three new Nigerian migrants. The reaction was immediate, their bodies tensed, they looked back almost defiantly but expressionless, and walked away. The other manager, in a similar gesture, moved quickly towards a group where he had spotted new residents. He extended his hand with a smile and a good morning. The reaction again was telling: the Eritrean immigrant took a quick step back, bending his head, awkwardly staring at the manager's extended hand. Not before stealing a quick look up to check if the gesture was friendly did he slowly extend his hand back. As we left the group, the manager under his breath told me, in a concerned tone: 'It will take time ... "freedom" doesn't automatically come with release from detention ... freedom comes when they manage to work detention out of their system.'<sup>39</sup>

The effects of detention on immigrants are also the subject of the Europe-wide report *Becoming Vulnerable in Detention*. The country report on Malta concludes that there are a number of factors, related to or resulting from, their detention in Malta, that lie at the root of a marked deterioration in immigrants' physical and mental health/well-being. These are: complaints from detainees of increased stress, frustration, loss of appetite, sleeping problems and feelings of powerlessness. Significantly the causes identified, which are often aggravated by past traumas experienced in their country of origin or on the journey to Malta, are various: the fact that they are deprived of their liberty, the lack of information about their situation, their inability to do anything about it, the poor conditions in detention, being incommunicado with family and friends and the lack of possibilities for engaging in gainful activities.<sup>40</sup>

One of the more apparent manifestations of inhuman treatment is represented by cases of physical violence. Taunting and bullying by a few soldiers was commonplace yet rarely punished. The most public example, denounced by many, was an incident in which immigrants were beaten up during a peaceful demonstration at Safi Barracks on 13 January 2005.<sup>41</sup> Immigrants housed in B Block held a demonstration to protest the conditions in their detention centre, the length of their detention and the lack of information about the progress of their applications for refugee status and humanitarian protection. One hour after the start of the demonstration a large number of soldiers in law-enforcement gear took up position around the demonstrators. When the demonstrators refused to return quietly to their barracks, the soldiers charged at them and violently put down the demonstration. Some of the soldiers were reported as having uttered racist slurs in encouraging their colleagues to beat the detainees.<sup>42</sup>

In the mayhem that ensued, twenty-six foreigners and two soldiers were injured and had to be taken to hospital for examination and treatment. The incidents took place in full view of the soldiers' superiors and of the media, which reported the incidents extensively. Eleven months later, the Maltese government published the report of the magisterial inquiry, which concluded that the use of force so that the immigrants would return indoors was justified but that the force applied by several soldiers 'was exaggerated and out of proportion in the circumstances'. The Council of Europe's Human Rights Commissioner called on the Maltese authorities to take administrative measures as speedily as possible, prosecute those already identified as responsible for the use of excessive violence and conduct a thorough investigation with a view to prosecuting any additional culprits not yet identified. In addition, training and supervision of members of the AFM in dealing with the detention of foreigners had to be provided by the authorities.<sup>43</sup>

Violence on immigrants by other immigrants, at times the result of mental health problems but also due to the lack of security in the centres, has been a regular occurrence. In one incident during my fieldwork, following a dispute, an immigrant poured hot water from the water boiler on to another immigrant while he was asleep on his mattress on the ground at night. The aggressor was given a warning and moved to another centre. A few years back, an Egyptian immigrant was brutally murdered by another immigrant. This time the murder happened in the afternoon while the victim was sleeping in the room he shared with another fifteen detainees. The aggressor used iron bedposts to smash his head. The site of the crime was splattered with large quantities of blood that could not be cleaned until evidence had been collected. This was an additional trauma for the other detainees as it meant that the dried blood remained there for around a week.

Such dehumanisation greatly affects NGO workers and soldiers too. In a way, it is detention's 'collateral damage'. For the few NGO workers who have a permit to enter detention centres, witnessing the deterioration of immigrants in detention and the feelings of helplessness are often exhausting experiences. The lack of



**Figure 1.** Armed Forces of Malta beat migrant detainees during protest at Kirkop football ground, 13 January 2005 (Photo: Taken by Alfred Giglio, courtesy of *The Times of Malta*)

understanding among other Maltese adds to their frustration. Detention is hardly visible, partly because of a policy of refusing media representatives access to detention centres. This policy was very slightly relaxed from 2008, but, amidst all these frustrations, an NGO worker complained that this was still not enough. She went on to describe her experience of detention:

I think that somehow it's one thing to read a write-up in a newspaper and see some photos, you know. Somehow it's so different to actually go inside: to sit there and smell that horrible fetid air, slight smell of drains, to be in that crowded environment, with beds all on each other and all those people all vying for attention, all - 'please, please help me', 'you must listen to my story', 'mine is the worst' ... All individuals literally ... That is something you can't really get through media coverage. I think that the full horror of detention is difficult to portray, but I do think that if there was more openness and we had journalists who were willing to go inside and speak to people, it could make some difference.<sup>44</sup>

The immigrants are not alone in viewing detention as a punishment. Although the criminalisation of illegal entry was expunged from Maltese laws in 2002, it was clear to me that, in spite of rhetoric and official documents stating otherwise, this was still the dominant mentality among policy-makers.<sup>45</sup> During my fieldwork, I once found myself in the midst of a group conversation with various ministry (including other associated agencies) officials in a canteen. This came at a time when I had had a series of conversations with them about the administrative necessity of detention centres. Detention was always presented in business-like and managerial terms - establishing identity, health checks, processing asylum claims - all for the good of Maltese society and immigrants themselves. The following conversation showed me that the processes entailed in the phenomenon of detention were not as apolitical as they appeared on the surface.

Out of the blue, one of the guys asked: what was my 'problem' with detention? Heads turned to listen to my reply, making it clear that this was something that they had been discussing before, in relation to me. I decided to be tactical and avoid being controversial, without being dishonest, since I suspected that they were less interested in my reply, but had something to tell me. So I made reference to an incident which involved violence against immigrants in the community and said that my concern lies with the effects that detention might have on immigrants' integration and Maltese attitudes towards immigrants. They were quick to respond. The problem is that these people will find gullible souls (I am not sure if this was a direct reference to me) or vulnerable people like prostitutes and older unmarried women amongst the Maltese and start making their way 'in'. They went on to explain to me that once the Maltese start 'mixing' with immigrants, that's when the big problems will begin - detention ensures that this situation is kept under control. That is what we have to avoid

at all costs. Detention is needed, because the immigrants need to know that 'we mean business'. That law and order is valued in Malta and those who break the rules get punished.<sup>46</sup>

This is completely different to what I had been told before. It strongly suggests that the practice of subjugation and humiliation is not unintentional but is the manifestation of evil and deeply entrenched beliefs. The root cause of the administrative mayhem and the irrational policies surrounding detention is the type of structural violence found in underlying social forces like racism and social inequality. The most serious is that of considering people 'less than human', as being fundamentally unequal, which manifests itself as a lack of respect for human dignity. In brief, looking at detention through the lens of human dignity shows us that basic irreducible standards have been bypassed. The lack of freedom and 'appalling' conditions reported by human rights organisations have made possible the creation of a space where dehumanising practices are commonplace and immigrants are reduced to mere existence, 'less than human'.

In further support of the notion that deep underlying social forces are manifest in detention practices is the shame of people working within the system when they realise that they have stopped resisting the system. Nurturing a perception that immigrants are really 'less than human' may be what allows the system to continue operating. But this same perception may be rather difficult to keep in place for those people, like NGO workers and some detention officers, who are in direct contact with the immigrants:

You have all the ugliness of humankind that could possibly happen, is happening there. And somewhere along the line we came to accept it. I think it really hit me towards the end of last year, 2008, when I actually said to my staff, somewhere along the line we've stopped trying to fight this, we've accepted it.<sup>47</sup>

This is the kind of situation that human rights set out to change and eradicate from society. A situation in which 'the ugliness of humankind' is present ought to be the kind of situation in which the human rights machinery sets to work!

Human dignity points to two major shortcomings that have led to the human rights failure to protect irregular migrants in Malta. The first is that government policy on detention does not place human dignity at the centre of its efforts. This is because the government embraces a flawed understanding of human rights that is over-legalised and positivistic, and therefore fails to identify, let alone address, its root causes. Human rights considerations ought to start from the situation on the ground – how are people being treated? What does this experience mean for them? Instead, the government has chosen the legalistic route that consists, essentially, of an impersonal choice and a top-down approach. Reminiscent of the thinking of Te Water, this not only lacks depth but in practice derails human rights from what it sets out to achieve. It is understandable that the government

seeks to manage irregular migration in a way that fits with the national scenario and seeks long-term solutions to irregular migration. This should not, however, be done at the expense of the human rights of irregular migrants themselves.

### **Towards a human rights culture**

Human rights discourses that fail to retain human dignity at their core are intrinsically flawed. Detention in Malta is an example of an incongruous situation whereby human rights, conceived on the basis of the 'inherent dignity' of every human being, in practice indirectly support a situation that has dehumanising effects. The production and reproduction of 'human rights' by the different discourses has fashioned the dominant interpretation put forward by the government, which establishes that no human rights are being violated even if the treatment of immigrants in detention is unacceptable. This is the result of deeply embedded social forces that the human rights movement has a mandate to change. Looking at detention from the vantage point of human dignity gives us the boldness to denounce the practice as morally wrong, and to assert that any interpretation of human rights that supports it (or does not consider it a violation of human rights) is flawed.

It is within the framework that Malta cannot always offer opportunities and life choices for migrants that the government must sustain its efforts at building international solidarity and finding long-term solutions. The first step towards achieving change in the treatment of irregular immigrants in Malta is a review of the whole system of detention. In parallel to this, immigrants should be empowered to speak out – through legal channels, media and so on – and be in a position to challenge their situation in an independent court, thus ensuring the implementation of the rule of law.

Detention needs to be kept to the barest minimum, since in practice it is difficult to envisage an institution that intrinsically deprives people of their liberty as humane. In addition, as already demonstrated, detention creates a space where there is a huge risk of manifestations as well as constructions of systemic or structural violence.

The importance of human rights organisations – national human rights institutions, local and international NGOs, intergovernmental organisations and treaty-based monitoring bodies – cannot be emphasised enough. For their approach demonstrates the theoretical necessity of retaining the concept of human dignity at the core of their activities; activities that then feed debates and discussions in the public sphere with informed material from a human rights perspective. In addition, human rights organisations have played a crucial role in highlighting the plight of irregular immigrants. Without their contribution and the media interest they generated, one could cautiously conclude that the conditions of irregular immigrants in Malta would have been much worse.

Human rights education is key to addressing the root causes of undignified treatment and in particular the perception of immigrants as 'less than human'. The changes that human rights organisations propose are important but the social forces producing structural violence will still be there. One could have the most modern and well-equipped detention centres, but if immigrants are perceived as 'less than human' then that will be reflected in everyday practices. As the Eritrean immigrant quoted earlier drove home so powerfully, the death of the 'internal soul', the desperation, the 'horror' of detention are not brought about by the overcrowding, the cold food, or the lack of access to lawyers, but by the 'less than human' status afforded him.

The lack of understanding of the role of human dignity and its role in grounding human rights philosophy, is possibly the biggest indication that states' parameters for what constitutes human rights are on the wrong track, and that, as the human rights thinker Costas Douzinas commented, contemporary societies may be heading towards the 'end of human rights'. Similarly, but with less pessimism, Jurgen Habermas has aptly likened the concept of human dignity to a seismograph.<sup>48</sup> Just as a seismograph records tremors and seismic waves, and acts as a warning of an imminent earthquake, so the concept of human dignity serves to warn us whether laws, policies or actions prioritise and respect human beings. The phenomenon of migrant detention in Malta is one such example, to be taken as a warning of a great malaise. Such detention policies, and the practices they generate, are founded on and foster the perception that, somehow, the process of migration renders people 'less than human'.

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