

## ***Immigration Detention Through Time***

UAI-UK 'Where is Humanity' Event  
The human cost of detaining asylum seekers  
25<sup>th</sup> February 2020  
Initiatives of Change  
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**'Where is humanity?'** was the slogan in one of the posters that migrants and asylum-seekers held during a second protest at Safi immigration detention centre in September 2019 in Malta. From behind the wire fences detainees held at Safi Barracks defiantly waved their hands in the air desperately demanding 'freedom' and 'humanity'.<sup>1</sup> [Slide 1]

### ***Introduction***

There is no doubt that Safi's detainees cry to the world highlighted two legal and moral concepts: freedom and humanity. Their plight summed up immigration detention. It highlighted how the humanitarian concept of asylum was in jeopardy. However, deprivation of freedom is not new and neither is inhumanity. To trace the history and legacy of immigration policies and practices of detaining 'aliens', I draw heavily from existing historical accounts and contemporary documentation. From this I suggest that the impact of immigration detention has been a gradual but violent stripping of the worth of human life. Asylum-seekers, refugee and other migrants' lives have lost the geopolitical and economic value ascribed to them throughout history.

### ***Historical Overview***

Experiences of inhuman incarceration in the US and Europe during the mid-nineteenth and early twentieth centuries are a case in point. Historically, the practice of detaining non-criminal 'aliens', and 'non-citizens' in special centres and depriving them of their freedom had been integral to the idea of an 'enemy alien' in war situations. In the US for example, it even goes back to the late eighteenth century. The Alien Enemies Act and Sedition Acts of 1798 were the first legislation for detaining non-citizens which also included provisions for deportation, particularly of Irish poor (Hirota 2017).<sup>2</sup> The Chinese poor followed. After being welcomed as a critical source of cheap labour in the mid-nineteenth century, the Chinese *coolie* labourers presence in the US ended in a virulent anti-poor Chinese movement and they had to be excluded. Focusing on the alleged racial inferiority of the "*coolies*", the 'Evil of Chinese Immigration' was shaped in the 1882 Chinese Exclusion Act. As it was already a norm, immigrants to the US had to pass an examination 'inspection'. The *Immigration Act 1891* introduced a futuristic innovation known as 'entry fiction'. This entailed the removal "offshore" for examination inspection. According to this Act, this procedure 'shall not be considered a landing during the pendency of such examination' (*ibid*). This meant that, while under inspection, immigration

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<sup>1</sup> <https://timesofmalta.com/articles/view/migrants-protest-for-a-second-time-in-detention-centre.734227>

<sup>2</sup> Irish immigrants to America were called "niggers turned inside out".

detainees were out of sight. It treated the territorial detention facility as if it was offshore and considered detainees as not being legally present. This is a development that, in future, would shape immigration control policies and practices.

A century later, the US continued detaining 'aliens'. The suicide of a Haitian asylum-seeker, who was in detention in Dade City jail in Florida in the mid-1970s made visible the detention of asylum-seekers *in* prisons. By 1999, thousands of undocumented asylum-seekers were detained in U.S. detention centres and jails. Amnesty International (1999:2-3) denounced that they were often detained indefinitely, not knowing when or if they would be released. They sometimes were held in inhuman and degrading conditions. They had been stripped and searched, shackled and chained, verbally or physically abused and denied access to their families, lawyers and NGOs who could have helped them. Many times they were confined with criminal prisoners but unlike criminal suspects, were denied any opportunity of parole. Today's inhuman detention of desperate Central American asylum-seeker children and families, that already amounts to a humanitarian crisis. (MSF 2020), should not surprise us. Alan Kurdi's tragic drowning while crossing the Aegean Sea in September 2015 draws comparison with the drowned bodies of a Salvadorean father and his 23-month-old daughter Valeria crossing the Rio Grande in June 2019. [Slide 2]

US racialisation of immigration detention policies and practices has been mirrored in other countries. In the UK the Irish poor and Russian Jewish refugees who, from the 1880s onwards settled in Britain, experienced xenophobic hostile sentiments. Issues of poverty and race delineated anti-alien immigration and asylum laws. As is a regularity now, the natives saw them as an economic and social threat. The first British legislative act was introduced in 1905. The 1905 Aliens Act gave Immigration Officers power to refuse entry to those regarded as 'undesirable.' WWI added a new dimension, the internment and suffering of many thousands of German and Italian 'enemy aliens'. This environment influenced public clamour to close the doors to refugees and economic migrants. Anxieties concerning class, public health, moral codes and, above all, national identity were projected onto immigrants and minorities. Tight post-WWII government policy on immigration responded to the opposition to South Asian and Caribbean immigration. Although the 1948 Nationality Act conferred the same UK citizenship status to more than 200,000 colonial subjects who had migrated to Britain, the 1962 Commonwealth Immigration Act sought to reduce immigration by depriving British Commonwealth citizens of the right to settle in Britain that had been enshrined in the 1948 Nationality Act. Today's deportation of long-term UK residents from detention centres like Harmondsworth & Colnbrook Immigration and Removal Centres (IRCs) is a cruel reality. The 1971 Immigration Act complicated the forms of detention. Those asylum-seekers violating the Act, were detained either on entry or after entry. In the process, binary connotations such as 'bogus'/genuine', 'illegal'/legal' and 'good'/bad' asylum-seekers emerged. In such contexts, asylum became a politicised and moralised *problem* that easily entered public debate and opinion. In one year alone (1981) as many as 20,000 people were 'temporarily' detained at Heathrow and 3,000 in Dover and Folkstone (Cohen

1989:152). By 1987, asylum-seekers had been already entering what Cohen (*ibid*) called the ‘strange half-world of the immigration detention centres’. These were located at Harmondsworth, the Queen’s Building (Heathrow), the Beehive (Gatwick), Foston Hall (Derbyshire) and the airport and port detention centres in Manchester, Birmingham and the Channel ports. Incredibly, in 1987 the Home Office leased a car ferry, the Earl William anchored off Harwich to establish a detention centre aboard. [Slide 3] I say incredibly because this measure mirrors US nineteenth century policy of ‘entry fiction’. People from Harwich and outside regarded the Iranian, Afghan, Tamil and Chilean detainees as criminals. ‘Many saw the ferry’s ‘offshore’ location as an indication that the detainees were ‘not really’ in Britain’ and that it was a hospital ship with the associated ideas of contagion and disease’ (Cohen, 1989:153). Some detainees expressed the view that they would be better guarded by prison officers as Securicor guards were inexperienced and unsympathetic and tended to view them in criminal terms. Yet, asylum-seekers were also detained in Her Majesty’s prisons. The suicide of Ugandan asylum-seeker, Ahmed Katangole in Pentonville Prison on 22 March 1987 is a case in point. Over four decades later (April 2019), there were 419 asylum seekers in prisons. Out of 81 prisons, Wandsworth and Pentonville had the most (McKinney, 2020).<sup>3</sup> Undoubtedly, by detaining asylum-seekers in prisons, they are criminalised *ipso facto*. It is no surprise therefore that by now the UK has the highest number of detention centres in Europe and that in almost a decade, the number of immigration detainees had been stable. [Slide 4] Despite that the Inquiry of the All Party Parliamentary Group (APPG) on Refugees and Migration into the use of immigration detention<sup>4</sup> recommended a maximum time limit of 28 days, the UK is the only country in Europe that detains people indefinitely under immigration rules.

In his Foreword to Behrouz Boochani’s book *No Friend but the Mountains. The true story of an illegally imprisoned refugee*’ (2018: xi), Richard Flanagan referred to living conditions in Australia’s Manus Island as ‘a zoo of cruelty’. This reality mirrors many of the plights that asylum seekers living in similar detention conditions elsewhere hold up in their protest banners saying ‘We Are Human Beings, Not Animals’. In fact, Australia has the most restrictive immigration control regime in the world. It makes use of offshore detention facilities imposing mandatory detention measures and works closely with regional countries to boost their detention capacities. In April 2016 and due to living conditions, three asylum-seekers died in the offshore ‘processing centre’ of Christmas Island. Iranian refugee Omid Masoumali set himself on fire in protest at his ongoing detention on Nauru Island, a woman refugee remained in

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<sup>3</sup> Between April and September 2019 the average of immigration detainees in Wandsworth was 33.8 and in Pentonville 20.3. Other prisons such as Wormwood Scrubs and Nottingham had 19.8 and 15.3 respectively. Author’s own calculations.

<sup>4</sup> See: ‘The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom’ – A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration’ <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

a critical condition.<sup>5</sup> Boochani's dehumanised experience in the other colonial offshore detention centre of Manus Island, highlights Australia's contemporary brutal and degrading warehousing and treatment of asylum-seekers and refugees. He himself was reduced to a number: MEG45. In his own words, *Manus was worse than a prison. They destroy your identity, they take your freedom to destroy you, you are reduced to a number. When we were in line to get basic things they called us by number not by name. When you are caught in their bureaucratic system they mechanise you.*<sup>6</sup> Australian offshore processing asylum claims plus the implementation of detention camps in its remote islands, where detainees can be held indefinitely and under inhumane and degrading conditions, have reached a benchmark of inhumanity almost comparable to the appalling material conditions in Libyan detention centres.<sup>7</sup>

The roots of such an inhuman system are found in Australia's infamous deportation policy that was in force from the aftermath of WWI. Its national security, law and order and immigration controls rationale unquestionably revealed Australia's inhumane face (Newman and Tavan 2009). The notorious early twentieth-century 'White Australia Policy' (Immigration Restriction Act of 1901) is a case in point. Against this backdrop, the Australian immigration "model", the so-called 'Pacific Solution' (2001-2008) and "Operation Sovereign Borders" (OSB) since 2013 that included the "stop the boats"<sup>8</sup> deterrence measure, should not surprise us. Decisions to erase from the Migration Act almost *all* references to the 1951 Refugee Convention including the *non-refoulement* protection principle has aggravated Australia's inhumane records. Regrettably, even being the most restrictive immigration system in the world, the Australian 'model' is proving to be influential and it has been 'inspiring' proposals in some European Union (EU) Member States (Bank 2016) and beyond.<sup>9</sup>

### **What is immigration detention?**

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<sup>5</sup> 'Self-immolation: desperate protests against Australia's detention regime. Ben Doherty and Helen Davidson *The Guardian* Tue 3 May 2016. Article can be accessed at: <https://www.theguardian.com/australia-news/2016/may/03/asylum-seekers-set-themselves-alight-nauru>

<sup>6</sup> Behrouz Boochani's video conference during his book launch on Friday 21<sup>st</sup> February 2020 at Birkbeck. 'No Friend but the Mountains (Behrouz Boochani) Book Launch Birkbeck Clore Management Centre. Attended by author.

<sup>7</sup> For a media account see "Libya to close 'inhuman' migrant detention centres after outcry." BBC News 2 August 2019 at <https://www.bbc.co.uk/news/world-africa-49203792>; and Medecins Sans Frontieres 'Trading in suffering: detention, exploitation and abuse in Libya' 23 December 2019. Accessible at: <https://www.msf.org/libya's-cycle-detention-exploitation-and-abuse-against-migrants-and-refugees>

<sup>8</sup> The boats were carrying asylum-seekers who, demonised with this slogan and practice, were sent to indefinite offshore detention centres in Manus Island and Nauru but also to Christmas Island.

<sup>9</sup> Conservative and Right-wing parliamentarians in Chile have been proposing the 'Australian model' to regulate immigration in the country.

According to the Jesuit Refugee Service (2004:) ‘Legally, detention is an administrative measure and not a measure of the penal system, although its use takes on characteristics of criminal incarceration. Thus it is neither pre-trial detention on remand nor imprisonment after a court trial.’ It is administrative because unlike in the criminal system, State authorities do not need to seek warrants pending an initial decision to detain. Also, the authority behind immigration detention is not the Ministry of Justice but the Ministry of Interior and that means ‘security’. In the UK, the administrative authority in charge of immigration detention is the Home Office. Hence, detained asylum-seekers are administrative detainees. They are people who are not charged with a crime but whom the state has decided to detain in order to carry out administrative procedures such as deportations or decisions on asylum claims. The rationale behind administrative detention is to promote immigration control either by ensuring that asylum seekers do not abscond and/or deter others from coming.

Yet, detention for purposes of deterrence is a form of punishment in that it deprives a person of their liberty for no other reason than having been forced to escape violence, persecution and death. Despite the fact that seeking asylum is not a crime, asylum seekers are being criminalised. Seeking asylum is a human right that is enshrined in the Universal Declaration of Human Rights. Article 14 states that [E]veryone has the right to seek and to enjoy in other countries asylum from persecution’.

### **When the detention of asylum-seekers in prison-like facilities started?**

Aware of this situation, in 1986 UNHCR stressed that ‘Detention is no solution.’ (*Refugees* No36:5) The Refugee agency’s concern was related to the significant number of countries involved in immigration detention practices that – as we have seen – started as early as 1977.<sup>10</sup> One of the explanations given for the detention of asylum seekers was due to the large-scale influx of refugees in some countries. Those countries were mainly in the Global South. That meant that these asylum-seekers were non-Europeans and came from poor countries. [slide 5] In 1982, the Ratio of Refugees to Local Population showed that Jordan, Somalia and Lebanon hosted the most refugees. However, the concern was that, some of them, were already at the gates of Western countries like Australia and Canada. The 1984 map shows that distribution [Slide Map 1984]. A 1984 survey of just 23 countries showed that in a number of them, some form of detention had been implemented.<sup>11</sup> The seriousness of the situation had been discussed in the 37<sup>th</sup> Session of UNHCR’s Executive Committee (1986) and recommendations were proposed. It

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<sup>10</sup> In 1977, the 28<sup>th</sup> Session of UNHCR’s Executive Committee on Expulsion, ‘(e) *Recommended* that an expulsion order should only be combined with custody or detention if absolutely necessary for reasons of national security or public order and that such custody or detention should not unduly prolonged.’

<sup>11</sup> According to Helton (1989, 135), the countries surveyed were Austria, Belgium, Cameroon, Canada, Federal Republic of Germany, Hong-Kong, India, Indonesia, Kenya, Laos, Malaysia, the Netherlands, Nicaragua, the Philippines, Portugal, Singapore, Somalia, Sudan, Tanzania, Thailand, the United States, Zambia, and Zimbabwe.

- a) “Noted with deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation;
- b) *Expressed* the opinion that in view of the hardship which it involves, detention should normally be avoided.”

However, by 2020 we have an exponential growth in the detention of asylum seekers and other migrants. Immigration detention has spread around the world. [Map 2020]

That asylum seekers and other migrants have been detained in very poor hygienic and overcrowded conditions like the Safi Barracks in Malta is rather telling. As the number of asylum seekers (mainly from the Global South) is reaching 3.5 million, today’s borders have been securitised and immigration detention privatised. In the current geopolitical scenario, those lives from the Global South matter very little. The running of many detention centres throughout the world has been contracted out to private corporations. We now have: Corrections Corporation of America (CCA), Wackenhut (now the Geo Group), G4S, Serco, and Management and Training Corporation (MTC). Countries such as Australia, the US, Sweden, South Africa, Canada, the UK, Japan, the Czech Republic, Luxembourg, Ireland, Estonia, Italy, France, Portugal Finland and Germany employ private contractors and these companies operate for profit. Research is showing that the shameful treatment of asylum-seekers pays no regards to the physical and psychological consequences that impact immigrant detainees and their families. I concur with some scholars who have defined contemporary immigration detention warehousing as *Horror Realism*. The global immigration detention regime is keeping asylum-seekers and other migrants out of sight. **It is our task to ensure that they are not kept out of mind.** [Final slide]

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Olukunle Adetunji, imprisoned in immigration detention for almost a year, argued against transferring Ebrahim Toure to the Rexdale Immigration Holding Centre. "A jail is a jail," he said. Toronto, October 5, 2017

The End Immigration Detention Network (EIDN) is calling for the immediate introduction of a time limit on how long someone can be imprisoned after Ontario Superior Court Justice Alfred O'Marra ruled against the release of Ebrahim Toure, detained without charge in a maximum-security jail for four-and-a-half years. Immigration detention is meant to be a last resort, just before a person is removed from the UK. According to Home Office policy, detention can be used "where there is a realistic prospect of removal within a reasonable period". Detention "must be used sparingly, and for the shortest possible period necessary".

I went through a period of psychotic breakdown, I had to attend a number of therapy sessions to get to my senses. I went on a hunger strike, tried to commit suicide - all for the sake of trying to have my voice heard in the midst of the chaotic world. There are both short and long term effects of detention.

Join openDemocracy on Thursday 25 June at 5pm UK time/12pm EDT for a live discussion on these and many more questions with some of the competition judges.

Immigration detention is often an administrative measure, but in States where unauthorized entry is a criminal act, detention can be imposed pursuant to criminal law. Most international bodies consider the criminalization of irregular entry as disproportionate and recommend that it be considered an administrative infringement.

No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

1. The Working Group on Arbitrary detention further states that immigration detention should gradually be abolished, because migrants in an irregular situation have not committed any crime.

2.