

# Vulnerable to the System: Migration and Torture in Spain

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**Abstract** Grounded on the results of an ethnographic investigation on asylum seekers as victims of torture in Spain, this chapter analyses the governmental devices that define the reality of migrants as victims of torture. Stemming from a critical review of the concept of torture, in relation to migration in contemporary European societies, the chapter puts forward the double vulnerability to which migrants are exposed, as unprotected victims of torture in their countries of origin and as potential victims of torture on arrival to Europe. The paper argues that the precarious legal status and the failure of systems victim protection, combined with meritocratic approaches to migrant incorporation, not only fail to ensure full protection of victims of torture but, moreover, it exposes these victims to further situations of violence and exclusion.

**Keywords** Torture. State violence. Asylum seekers. Immigration. Spain.

**Summary** 1 Torture, Migration and State Violence. – 2 Spain and the [un]protection against Torture. – 3 Asylum-Seeking Victims of Torture. – 4 Torture and the Enforcement of Migration Policies. – 5 Conclusion: The Double Vulnerability.



## 1 Torture, Migration and State Violence

Torture is an age-old phenomenon, which has been present in Western societies for centuries, and was revealed as particularly prevalent throughout the 20th century. The understandings, interpretations and different forms torture has taken have been the subject of complex debates, both from academic, political and legal approaches. It is not until relatively recently, in the last decades, however, that the connection between torture and migration started to become evident and, as such, turn into the focus of study, largely as a response to its growing global perceptibility and its multiplicity in practices.

While the purpose of this chapter is not to provide an epistemological review of torture and migration, but rather to advance an in-depth contemporary analysis of this phenomenon in a current setting, it is necessary to begin with a brief consideration of the key underpinnings of the concept, in order to offer an accurate examination. This implies going beyond common perceptions of torture, its victims, perpetrators and the societies where it takes place, to provide solid grounds for the discussion of the intertwining between the two complex realities that torture and migration presuppose.

Despite common understandings by most public and political debates of torture and inhuman or cruel degrading treatments as exceptional deviant acts (Tulloch 2005) with the media presenting torture as a barbarous aberration alien to democratic states,<sup>1</sup> it is critical to understand that, from an analytical perspective, torture cannot be considered as an exceptional act in our society, as torturers cannot simply be dismissed as monsters. Rather torture is understood as an exercise practiced as part of work duties, by ordinary people, because, as Arendt (1964) vindicated, far from being monstrous, evil is often banal. It is, as Zimbaro (2002) explored, the society and the circumstances that provoke and eventually normalise these acts - such as that endorsed by the so-called Global North's 'war on terror'.

Thus, whilst from a legal point of view torture has tended to be studied as a form of exceptional state violence, from a social and cultural analytical viewpoint this has to be understood as both a criminal and a deviant act, yet consistent in Western societies as part of much less exceptional forms of deviance, as the case of torture and migration illustrates. From this understanding, torture cannot be considered solely as an exceptional event in the hands of 'folk devils', but is rather to be understood within the logic of its social production

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<sup>1</sup> There is a relatively developing trend in media and popular debate in this regard, shown by measures such as "extraordinary rendition" in the USA, which implies flying terrorist suspects to countries where allegedly they can be tortured outside Western legal jurisdiction.

(Cohen 1972). It is crucial to consider that the practice of torture does not take place in isolation, but under the influence of certain narratives, sites and times where particular subjects are construed as dehumanised (Bauman 2008). These frameworks denote the potential for torture as inherent in the power relations that determine the dehumanisation of the disempowered as the “torturable subjects” (Mendiola 2014). Such [re]construction of the disempowered as ‘the other’ assents to their identification with whatever “questions the imagined security, peace, order and rule of law of Western democratic societies” (Mendiola 2014, 2018).

In a context of increasing criminalisation of the poor, for those living at the edges of society the persistent and latent danger of being subjected to torture is part of the apparatus of control over their daily reality (Wacquant 2009). Torture becomes not only a means of punishment but also “part of the civilizing mission” (Butler 2009, 16). State violence, non-exceptional but normalised, is practiced against this ‘other’ as a mode of disciplining them into the prevailing social order and asserting the moral superiority of the torturer over the tortured as guardian of this social order. Torture becomes thus not the only but the most visible outcome of a continuum of violent state practices aiming to control and discipline populations that are regarded as criminal and as the threatening ‘other’.

Arguably one of the most evident imprints of ‘othering’ processes in the current Global North is manifested by the production and normalisation of social spaces and boundaries between ‘us’ and ‘them’. This is nowadays epitomised by the exploitation of modern migration categories, most of which leave people stateless and thus rightless (Arendt 1973).

Migrants and asylum seekers are at the core of the socially excluded, being constantly [re]constructed as the ‘alien others’, through discourses of sovereignty and national security, as the flagged values of modern societies. They stand at the intersection that challenges the state’s sovereignty by their presence, particularly as poor and racialized populations, while living and working in a situation of legal exclusion. Thus, in analysing the link between migration and torture in contemporary Europe, torture must be understood in a continuum that makes no sharp divide between direct forms of state violence, and other, more subtle forms, in what is frequently referred to as “structural violence” (Galtung 1969). It is arguable that, following Parry (2010, 17), “[t]he use of these forms of violence by modern states as a way of regulating populations is far more significant than whether ‘torture’ is the particular form of violence used”.

Within this continuum, the states’ disciplinary practices that create the narratives and sites of torture extend to other spaces and milieus, including spaces of protection. In terms of the different debates that address this topic, most accounts of torture and migration con-

centrate on exploring the experience of those who have suffered violence in their countries of origin and during transit, and seek protection in the 'modern liberal democracies', allegedly free of torture. The core of this literature addresses the mental health impact of torture among asylum seekers<sup>2</sup> and the consequences this has for their asylum applications and incorporation at countries of settlement (Daniel, Knudsen 1995; Haoussou 2017; McColl, Bhui, Jones 2012; Oomen 2007). There have also been a number of studies tackling the lack of protection for victims of torture in countries of arrival regarding the absence of social safeguards, poverty and destitution,<sup>3</sup> and problems and considerations with reference to health care (Vannotti, Bodenmann 2003). Still, there is a lack of ethnographic approaches that address the mechanisms that underpin the absence of protection and neglect that asylum seekers suffer in Europe.

On the other hand, while there is a solid body of literature regarding violence suffered by migrants and asylum seekers in Europe, especially concerning violence at borders, detention and deportation,<sup>4</sup> this issue is rarely addressed in regard to the prohibition of torture (Morales 2016; Sanggaran, Zion 2016).

Grounded on the results of an ethnographic investigation of asylum seekers as victims of torture in Spain,<sup>5</sup> this chapter addresses both these issues to analyse the governmental devices that define the reality of migrants as victims of torture. The empirical investigation included two consecutive research projects that took place over a period of four years (2015-19). The arguments presented in this chapter are thus built on an exhaustive examination of documentation, with a particular focus on reports and official files related to the prevalence of torture against migrants in Spain, as well as an extensive ethnographic research. This involved over 50 in-depth interviews with key actors in civil society organisations and public officers working for asylum seekers and victims of torture. The results of this research reveal how asylum seekers, especially those who have been victims of torture, are not only subject to the violent

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**2** See, for instance, Kalt et al. 2013; Mazzetti 2008; Schubert, Punamäki 2011; Steel et al. 2009, amongst others.

**3** See Allsopp, Sigona, Phillimore 2014; Bloch, Schuster 2005; Davies, Isakjee, Dhese 2017; Menjivar, Abrego 2012, amongst others.

**4** See Alpes et al. 2015; De Genova 2016; Morales 2016; Mountz, Loyd 2014; Schuster 2005, to name a few.

**5** The chapter is based on two consecutive ethnographic investigations about the support for victims of crime and the reception system for asylum seekers and refugees in Spain, as well as on the analysis of reports and official documents on the prevalence of torture against migrants in Spain. Including both research projects, more than 50 in-depth interviews were conducted with key actors in civil society organisations and public officers working for asylum seekers and victims of torture.

consequences of inaction and neglect of a failing asylum system, but are also potential victims of torture by the direct use of violence in the enforcement of migration policies.

The case of Spain stands as paradigmatic in the exploration of migration and torture within Europe. This is not only because Spain has become one of the 'gates of Europe' but also for its central role in the development of border control technologies and strategies in the EU (Andersson 2014). In addition, since the beginning of the 21st century, with the exception of the peak years of the economic crisis, Spain has been consistently among the top immigration receiving countries in the EU, experiencing, in recent years, a sharp increase in the number of asylum applications, many of which are made at ports of entry. In this regard, condemnatory reports and measures by Human Rights international bodies against Spain for its practices at borders, in detention and deportation are testimony of the pervasiveness in Spain of all the modern forms of torture against migrants.

This chapter argues that the precarity of asylum seekers' legal status and the failure of the systems of social and health protection for victims, combined with meritocratic approaches to migrant incorporation, expose these victims to further situations of violence and abandonment and can lead them to chronic situations of exclusion and violence. Whilst this might be applicable to migrant victims of torture in general, the case of asylum-seeking victims of torture is especially representative due to the right of protection they enjoy as asylum claimants and the specific need of protection that all asylum regulations recognise for victims of torture.

The chapter begins by offering an overview of the context of torture in Spain: its legal framework, its limitations, and its violations. Grounded on ethnographic evidence, it later discusses the double vulnerability that asylum seekers face in Spain, as potential victims of torture and as unprotected victims of torture. Finally, building on the analysis of this double vulnerability, the paper sheds light onto the mechanisms that underpin the particular types of violence that arise in the enforcement of migration policies.

## **2 Spain and the [un]protection against Torture**

Understanding the current settings and progress of the legal and social background of torture in Spain is key to recognise how modern forms of torture have developed and taken a central place in the enforcement of migration policies in this country. After a 40-year dictatorship, in which the most evident practices of torture were a legitimate state tool (Acosta Bono, del Río Sánchez, Valcuende del Río 2008), starting from the democratic transition in the late seventies, Spain has ratified all international legislation against torture and

has adapted relevant national legislation geared to prevent and punish these acts. The Spanish Constitution prohibits torture in art. 15, stating that “Everyone has the right to life and physical and moral integrity, and under no circumstances may be subjected to torture or to inhuman or degrading punishment or treatment”.

Further, in 1984, Spain ratified the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and, in 2005, the 2002 UN’s *Optional Protocol*. Thus, at face value, Spain adopts a clear approach against torture as it has ratified all international covenants and their amendments, as well as integrated them into its national law. However, when looking closely into how Spain has transposed these responsibilities and principles, as well as into the practices of torture in its different expressions, it becomes evident that Spanish legislation for the prevention and reparation of torture does not offer all the guarantees recognised in international law (Rights International Spain 2017).

Considering the recent historical trajectory of Spain, with a background of a long lasting dictatorship, a major problem in the transpositions of rules and interpretation of torture stems from the definition of the concept of torture included in the Spanish legislation, and particularly in the current Spanish Penal Code. This, for instance, does not recognise that torture can be committed by “any person exercising public functions” other than public officers, and it does not recognise “intimidation” as torture. Also, it fails to consider torture as a crime against the international community (Amnesty International 2015, 8) and it distinguishes between “severe” and “light” types of torture (Rights International Spain 2017, 1). A further illustration of this flaw, linked to the conceptualisation of torture, is seen by the authorisation of *incommunicado* detentions, a situation of deprivation of liberty in which the detainee has no possibility to access an attorney, an independent physician or family members.<sup>6</sup> This lack of development of the national legislation for the prevention of torture can, and often does, lead to cases where torture is not condemned because it is not recognised as such. Also, and crucially, this contributes to a normalisation of behaviours and punishments that legitimises the excessive use of violence by public officials in the exercise of their duty.

However, this underdevelopment and lack of revision of the concept in the national legislation is not the only factor that hinders the possibilities of reporting and recognising torture and inhuman

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<sup>6</sup> Whilst international laws do not explicitly prohibit *incommunicado* detention, there is a general agreement among human rights bodies in the international community (Human Rights Watch 2005) that this can lead to severe human rights violations, including torture, and that it could be constitutive of torture in itself.

treatment in Spain. As the empirical evidence reveals, public bodies and private organisations investigating allegations of such acts face barriers to their inquiries, mainly in accessing existing evidentiary documentation and information on the cases, as well as delays, which severely curtail their capacity to provide documentary proof for these allegations:

We also face difficulties when investigating torture complaints because when we ask public bodies for information, well, finally they are the ones who decide and filter what they tell you. So, some things are out of our reach; we don't get them. We cannot take the civil servants statements nor watch the images. When we finally ask for the images, well, they have already been erased [due to programmed erasure], so there is a difficulty in proving torture. (SG-I-1)<sup>7</sup>

The strongest illustration of this is that the European Court of Human Rights (ECHR) has condemned Spain for not investigating duly torture allegations on nine different occasions.<sup>8</sup> This systematic lack of investigation relates to an invisibility of this practice by which, as Rivera Beiras puts it, “public authorities consistently deny the existence of torture [...] due to the lack of condemnatory rulings” (in Bergalli, Rivera Beiras 2006, 73). Yet, beyond this condemnation, this situation also raises the question of whether such a lack of condemnatory rulings responds to a denial of the existence of torture rather than to a scarcity of cases, as is the concern of many professionals in the field:

The system is perhaps not ready to acknowledge its own violation of human rights, because it would imply paying compensations and changing surveillance and confinement structures. But if there are 200 reports per year it is hard to imagine they are all made up or exaggerated, you can easily see this is a recurrent and structural issue, and that there would be 2,000 reports if people were aware of the possibility of reporting. (EX/B/TS/FN)

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**7** All interviews have been codified to guarantee the anonymity of the interviewees. Own codes are included in reference to each quote for access and data management purposes.

**8** The nine cases are: *Martinez Sala and others v. Spain*; *San Argimiro Isasa v. Spain*; *Beristain Ukar v. Spain*; *B.S. v. Spain*; *Otamendi Egiguren v. Spain*; *Etxebarria Caballero v. Spain*; *Ataun Rojo v. Spain*; *Arratibel Garciandia v. Spain*; *Berotegui Martinez v. Spain*; *Portu Juanenea and Sarasola Yarzabal v. Spain* (Source: HUDOC, European Court of Human Rights Data Base). In all cases Spain was condemned for not duly investigating torture claims, except in *Portu Juanenea and Sarasola Yarzabal v. Spain*, where the court condemned Spain for inhuman and degrading treatment. In *B.S. v. Spain*, the court condemned Spain for not duly investigating on the grounds that it should have considered the victim's ethnicity, gender and migration status.

In this regard, in addition to the already mentioned sentences of the ECHR for not duly investigating torture cases, Spanish government bodies have repeatedly nullified the rulings condemning public servants for torture or inhuman or degrading treatment. Moreover, Spanish institutions have not only pardoned but also decorated or promoted the offenders of torture (Bergalli, Rivera Beiras 2006), projecting a clear message of impunity to both torturers and the victims, often perceived as a form of institutional violence.

I believe there should be independent mechanisms [to assessment] institutional violence, complaints against the police shouldn't be managed by the same public authorities [...] from experience we can say that public bodies rarely accept that they have done a wrong. So, people see this and think: 'this was a clear case and the culprit has not been sentenced', or 'they have been sentenced but later they have been pardoned'. You are conveying a clear message of impunity. (SG-I-1)

Thus, even when reporting is possible, the outcome is rarely positive for the victim, as Spain's approach to torture has been characterised by the impunity of perpetrators.

### **3 Asylum-Seeking Victims of Torture**

This general lack of visibility and accountability of torture within the Spanish context leads to an insufficient protection of victims who have to obtain a recognition of their victimisation to be able to access support services:

Socially, it is an irrelevant issue, that is, it is uninteresting or invisible... so there are not enough mechanisms or resources [...]. If someone has been victim of the police in Spain, the public health service has to acknowledge that their 'blood relative' has done something... has committed a crime, really, [...] so, it's difficult. (EX/B/TS/1/FN)

This has particular consequences for migrants, who often face additional barriers for reporting, including the fear of being arrested and deported, particularly if undocumented. Their lack of legal protection enables situations of abuse and defencelessness against the law, which in turn lead to further impunity of perpetrators and fewer reporting: "We have had cases of police beating some of the girls, sex workers, so we have had to figure out how to follow-up on this so they continue reporting, how to set a precedent so they don't feel it goes unpunished" (AH/B/C/1/FN).



Human rights organisations have raised concerns about possible victims and witnesses being deported before they could give testimony after having raised a complaint for having suffered torture.<sup>9</sup> Particularly, in the case of asylum seekers who have been previously victims of torture and police violence in their countries or origin, reporting becomes especially challenging. As this social worker from a migrants support organisation explained, they encounter many challenges including: “fear, their [previous] relationships with the authorities, the fear that nothing will change, that reporting will have consequences, the time they will lose on this... these are very long and taxing processes” (AH/B/C/1/FN).

However, in Spain, the asylum system assumes, by definition, that asylum seekers may have been victims of severe violations of human rights, including torture, for which there are specific provisions to provide health support and social protection to asylum seekers. Most of this protection is provided through the State’s “System for the integration and autonomy of claimants and beneficiaries of international protection”. Yet, this programme presents a series of shortcomings that contribute to the vulnerability of victims of torture and potentially drive them to further situations of exclusion and violence. These can be seen in its access criteria; in the behavioural and administrative requirements; and in the meritocratic logic in social care; by which the Spanish foreigners’ law increases the vulnerability of victims of torture instead of protecting them. At the core of these are barriers of access to adequate mental healthcare for victims of torture.

This is particularly relevant because, as mentioned earlier, in recent years Spain has experienced a sharp increase in the number of asylum claims.<sup>10</sup> Still, despite the large prevalence of victims of torture among asylum seekers – considering victimisation in origin, transit and destination (Vannotti, Bodenmann 2003) – the increase in the availability of specialised protection services for asylum-seeking victims of torture has not kept up with this rise in applications. Currently, most mental health and social protections for asylum seekers, including those regarding the specific care for victims of torture, are provided within the State’s asylum reception programme.

However, this programme is characterised by an abandonment of asylum seekers due to the saturation of the system (Garcés-Mas-

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**9** Sònia Calvó, “Un intern denuncia agressions al CIE de Barcelona per part de la Policia Nacional”, *Catalunya Plural*, 13 de febrer 2018. URL <http://catalunyaplural.cat/ca/intern-denuncia-agressions-cie-barcelona-part-policia-nacional/> (2019-08-01).

**10** Whereas from 1994 to 2014 the number of international protection applicants was consistently below 10,000, since the generalised rise in the number of asylum seekers in Europe in the 2015-16 period and the worsening of the Venezuelan crisis, the number of applications has surged in Spain. While, in 2014, there were only 5,947 asylum applications, in 2018 there were 54,065.

careñas 2019). In general, there is an alarming lack of accommodation and the few available slots are destined to those who are classified as “extremely vulnerable”:

To have access to certain services, which are really scarce, really limited, you need not only be vulnerable but have a series of additional issues. 100% of those who come here are vulnerable. But beyond being in a situation of social and economic vulnerability, you need to have additional issues which are the ones that give you priority access to certain resources. Children, physical or mental health conditions, etc. (Coordinator of Emergency Services for Migrants, NGO) (CR/B/C-SA/1/F0)

Despite the fact that under all legal frameworks and protocols victims of torture are recognized as especially vulnerable, the detection of vulnerability often responds to a criterion of urgency, although according to the professionals working with victims of torture on a daily basis, most cases of torture are frequently invisible: “They will not take you in unless you are visibly about to lose an arm... no, really, unless something very visible is about to happen to you when you come through the door” (AH/B/TS/1/FN).

This implies that mental health issues are rarely considered, unless claimants have documentary proof, or unless the frontline worker is able to identify them in the frame of the one-hour first social screening interview, often mediated by an interpreter. This absence of detection often leaves victims of torture without access to emergency shelter accommodation, leading to further situations of vulnerability such as the appearance and worsening of physical and mental health disorders or drug addictions:

As they go through the first screening they might look perfectly fine, they have just arrived, so the social worker there does not identify any issues and is not obliged to give them a full medical check. Then they get here, and they have a very visible mental health issue or a substance abuse problem or tuberculosis [...] because they have been living in the streets for six months before being assigned here. (Social Worker, NGO in Asylum Reception) (CE/B/TS/1/F1)

Such deficiency in the identification of victims of torture is a common concern among organisations that provide legal, social and health care for victims. Iridia – a main organisation defending human, civil and political rights in Spain – has denounced the lack of training within public institutions, such as the Forensic Medicine Institute, in assessing these cases (Iridia 2017). On these lines, the ethnography shows how the scarce preparation of professionals can lead to

the credibility of the victim being questioned and their symptomatology wrongly assessed, leading to situations of exclusion from access to basic services:

The worst is that the clinical presentation or the psychosomatic reactions of victims of torture or of traumatic processes are so unknown that many people are taken for something they are not. That is, if a person has suffered torture and goes to a public service and is not treated as they would have expected... they will most likely have a reaction of distrust, lack of control or lack of empathy or whatever, which will make other people regard them as... as something they are not. (Psychologist, specialised NGO) (EX/B/P/1/FN)

Credibility is a recurrent barrier that asylum-seeking victims of torture face and is not only questioned due to insufficient training but also because of professionals' expectations. In the context of asylum screening, cases of rape and torture are where "[t]he fragility of a concept of credibility [...], where officers may deny alleged events could have taken place, usually because of pre-attached labels" (Jubany 2017, 195).

At the same time, the asylum reception programme demands a high performance by asylum seekers. In this regard it is interesting how all social workers refer to how the bureaucratic maze and near-impossible requirements to obtain social benefits put a lot of pressure on asylum claimants, which is taxing for those who are experiencing effects on their health due to having suffered torture:

Adding stress to a person who is already stressed or who comes with a traumatic process, who sees that all they are doing administratively is not working, they lead people to self-exclude which is frustrating for the professionals who support them, so the user is, like, abandoned, because there's nothing you can do, right? They have to leave. They have to leave the centre and there's no other centre to go to. There are shelters, of course, but well, anyway, everything is precarious and temporary. (Psychologist, NGO) (EX/B/P/1/FN)

Although the asylum reception programme considers extensions for vulnerable cases, professionals consider that this is clearly not enough for people who are experiencing the symptomatology of torture or are in a recovery process from having suffered severe trauma. In addition, there is a scarcity of resources independent to the asylum programme for referrals for those who have exhausted asylum reception without achieving the expected degree of autonomy. Furthermore, and as previously mentioned, many of these cases are not properly identified or recognised, and extensions are often diffi-

cult to obtain due to different and changing criteria of assessment of vulnerability, which may exclude victims of torture.

This lack of resources and attention to the specific needs of asylum seekers in situations of vulnerability leads to a system that mainly supports those who are able to pull through the system by their own means, whilst it further burdens those who struggle to get through.

While this is especially obvious in the case of asylum seekers and refugees, it can also be applied to other migrant victims of torture or to those who have suffered severe trauma of other kinds, such as rape, but who have not entered the system of international protection. In fact, asylum seekers are perceived as being well supported by a reception programme that anticipates the specific vulnerability of victims of torture and plans the referral of these victims to specialised services although, as has been shown, this is not working adequately. However, the high number of negative final decisions in asylum cases<sup>11</sup> means that most of these asylum seekers will later become undocumented, which places a particular toll on their mental health: “[the rejection] is terrible, for everything it implies, losing your job, having your bank account blocked, everything. It’s... and... the lack of recognition, not being a person with the right to be protected. This is something that, emotionally, is really hard” (FC/B/TS/1/FN).

The general malfunctioning of the mental health services in Spain adds to the insufficiency of referral mechanisms for asylum seekers beyond the reception programme and other migrants who have access to generalist health services: “[t]he mental health public network, in general, is terrible. So referring this type of profiles [migrants] is complicated, because there are no resources” (BCN/SA/1/FN).

This deficiency of resources, together with the inadequate identification of victims of torture and a meritocratic social services approach in asylum seekers’ reception can lead to situations of chronic exclusion:

I had this kid, he’d been here since 2014 [...] he had his papers and all, but he was still homeless so [his social worker said to me]: ‘This kid’s been here since 2014, he should have done his bit’. And I was like... precisely because he’s been here since 2014 *and* he continues to be in the street, he has a vulnerability. I can clearly see it, why can’t you? I needed their authorisation to act on it. But no, [for them it was] just the opposite; if you’ve been here since 2014, [...] you’ve had your chance, you should have made the best of it. (Social Worker, NGO) (AH/B/TS/1/FN)

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**11** In 2018, 76% of the asylum claims that were evaluated were rejected (8,980 out of 11,875) (Ministerio del Interior, *Asilo en cifras*: <https://bit.ly/2pT02Px>, 2019-11-07).

Such policies of inaction, that subject asylum-seeking victims of torture to abandonment and neglect despite the mandate of protection towards them, are part of a wider logic and narrative of governmentality of migration that are also at the core of practices of overt violence in the enforcement of policies of border control.

#### 4 Torture and the Enforcement of Migration Policies

As previously discussed, migrant victims of torture are not only made vulnerable by the system due to a lack of protection and neglect but also by being made into 'torturable subjects'. In a context of increased criminalisation of migration, violent acts by public officials in the enforcement of migratory policies are normalised and understood as a legitimate use of force in the protection of the state's sovereignty (Bigo 2014). Even those migrants who have been legally recognised as asylum seekers, and therefore are subject to the specific protection that this category entails, are vulnerable to the state's effort to enforce border securitisation.

This is particularly obvious in the practices of border security, where detention and deportation are constantly present as a form of violence and degrading treatment. In recent years, migrants have consistently been among the main complainants in allegations of torture in Spain, as the reports by the *Coordinadora para la Prevención de la Tortura*<sup>12</sup> show. The number of torture allegations by migrants or their representatives has increased almost every year, often exceeding half the complaints registered.<sup>13</sup> These complaints relate, in the most part, to violence in border crossing, including the practice of pushbacks, and situations of confinement, especially in detention centres.

Spain's Southern border has become one of the main 'gates of Europe' and a central site in the development of border control technologies and strategies in the EU (Andersson 2014). Every other day, sub-Saharan migrants attempt crossing the Spanish-Moroccan border at the enclaves of Ceuta and Melilla by jumping over the threatening fences that separate the two countries. These fences are protected

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**12** The *Coordinadora para la prevención de la tortura* is the most prominent civil society organisation for the prevention of torture in Spain and publishes a yearly report aggregating data from all known cases that fall within the parameters of torture as defined by article 1 of the United Nations Convention against Torture.

**13** In 2014, complaints made by migrants were 37% of the total, in 2015 a 50%, in 2016 a 54%. In 2017, the number of complaints filed by migrants represented a 28% due to the large number of complaints for police violence in relation to the referendum in Catalonia (*Coordinadora de la Prevención de la Tortura*: <http://www.prevenciontortura.org/wp-content/uploads/2018/06/INFORME-CPDT-2017.pdf>, 2019-11-07).

with technological gadgets, barbed wire and guarded by armed police. Occasionally, images of everyday violence are leaked, showing the police trying to pull migrants from the fence with blows from batons and carrying them back to Morocco across the doors that were installed to facilitate these pushbacks. This practice is against the right of claiming asylum, as has been condemned by various international bodies, including the European Court of Human Rights (*N.D. y N.T. vs España*, 03-10-2017<sup>14</sup>). Despite this, these practices not only continue to be in place, but further deterrence mechanisms aiming at producing physical harm, such as concertina wire which have repeatedly caused serious injuries to refugees and migrants trying to jump the fences, have been introduced.

Similarly, pushbacks are common across the Mediterranean Sea. Migrants detected on their way towards Gibraltar or Canary Islands have been returned due to the collaboration between Spanish and the Moroccan and Mauritanian police forces (Andersson 2014). However, as in the *Tarajal* case,<sup>15</sup> where fifteen people died after the police used antiriot equipment to stop them from swimming around the Spanish-Moroccan border (Sánchez 2018), courts often dismiss such cases arguing lack of evidence or that the police were “acting under their obligation as border custodians, which compels them to prevent anyone from entering illegally in Spain”.<sup>16</sup> Yet the majority of torture complaints are dismissed and, when a trial is held, they often end in acquittal, or, if condemned, perpetrators have been repeatedly pardoned and later even promoted and decorated (Bergalli, Rivera Beiras 2006).

This is despite the fact that several United Nations human rights mechanisms, such as the Human Rights Committee and the Committee against Torture, have expressed their rejection of the application of such Amnesty Law that pardons torturers in Spain and further NGOs, such as Rights International Spain, have protested against these decisions on several occasions, urging Spain to ensure the non-applicability of statutory limitations to torture.

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<sup>14</sup> <https://www.abogacia.es/wp-content/uploads/2017/10/TEDH-STC.pdf> (2019-11-07).

<sup>15</sup> In February 2014, about 200 persons tried to cross the Spanish border at Ceuta by swimming around the breakwater. Spanish police tried to deter them from swimming to shore by shooting rubber bullets and gas grenades. Fifteen were killed in the incident. The case was dismissed twice by the local Court in Ceuta, the judge arguing that the police were acting under their obligation as border custodians. In neither occasion could any of the migrants who survived the incident testify, as they were sent back to Morocco through pushbacks or deported later. The case was finally reopened at the third attempt and it is now still pending resolution (Sánchez 2018).

<sup>16</sup> Europa Press, “Archivan la causa de las 15 muertes en El Tarajal por falta de pruebas sobre un uso ‘inadecuado’ del material antidisturbios”, *El Mundo*, 15 de octubre 2015. URL <https://www.elmundo.es/sociedad/2015/10/15/561f9524e2704e6e518b45e2.html> (2019-07-23).

A further interpretation of modern forms of torture refers to a definition of torture that relates to the deprivation of freedom without trial and the conditions migrant suffer in detention centres (CIE, Centros de Internamiento de Extranjeros). These centres were first established in 1985 across the Spanish territory, and are the only case under Spanish law that allows for the deprivation of freedom of movement due to an administrative sanction (Solanes Corella 2016, 38). Yet, only a small part of those detained in CIEs end up being deported. Most people are set free after the maximum time of detention is reached, leaving them in a legal limbo that prevents them from being deported as well as from regularising (Servicio Jesuita a Migrantes 2016). These centres are characterised by a lack of transparency regarding their internal conditions and proceedings. The number of inmates is not made public, nor are any other aspects of their detention, despite there being an obligation to do so under Spanish law (Escamilla 2016, 13). The UN Human Rights Committee raised concerns about the prevalence of these situations in Spain in a 2015 report denouncing “the recurrent use of deprivation of liberty to migrants in an irregular situation” and the repeated complaints of mistreatment filed by inmates against the police forces.<sup>17</sup> The scarce control over these institutions and the fact that recently arrived migrants are sent frequently to CIEs often implies contravening their right to claim asylum.

These practices expose the recurrence of torture in modern liberal societies in its contemporary forms and its position in mechanisms of control of the socially excluded, among which policies and practices of migration control play a central role. The absence of recognition of such violent events as breaches of the prohibition of torture contributes to their normalisation and legitimates the exercise of force in the enforcement of migratory policies, targeting undocumented migrants and contravening the protection that the right to claim asylum entails. Western democracies claim to offer international protection against torture to asylum seekers is contradicted by their own practices of migration management. On the ground, this protection is only recognised if torture is perpetrated by a ‘folk devil’ or a ‘threatening other’ despite the many gaps in these protection mechanisms. In the meantime, as the empirical evidence shows, torture practiced in a so-called modern democratic state like Spain is still disregarded, normalised and legitimated by the lack of recognition and protection against it.

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<sup>17</sup> Comité para la Prevención de la Tortura del Consejo de Europa (2015). *Informe al Gobierno español sobre la visita a España del Comité europeo para la prevención de la tortura*, del 14 al 18 de julio de 2014. [CPT/Inf (2015) 19]. URL <http://www.cpt.coe.int/documents/esp/2015-19-inf-eng.pdf> (2019-11-07).

## 5 Conclusion: The Double Vulnerability

Migration control policies have come to merge high levels of active involvement of the state in politics of inaction (Davies, Isakjee, Dhesi 2017) with violent consequences for migrants. This combination of migration policies of intensive state presence in areas like border control, with the politics of inaction in other areas like refugee reception, have exposed asylum-seeking victims of torture to a double vulnerability. On the one hand migrants are exposed to insufficient legal and social safeguards as victims of torture and to the deficiency of investment and resources in all mechanisms for the protection for asylum-seeking victims of torture, despite all legal provisions to this effect. On the other, they are subject to the potential violence of the enforcement of migration policies, including that of neglect and inaction.

The enforcement of migration control policies exposes migrants to specific forms of state violence that contravene the prohibition of torture. Borders, detention and deportation have been identified as the main sites where serious violations of human rights occur in relation to migration and where modern forms of torture are exposed. Within this, the case of asylum seekers is especially paradigmatic due to the specific mandate of protection towards them. Yet, because of the weak juridical status of asylum seekers, which leaves them at the fringe of the political community, states are not fully committed, nor concerned, in providing the protection that national and international regulations anticipate. This leads to a political abandonment that has violent consequences for asylum seekers, especially for those victims of torture or inhuman and cruel degrading treatments. Asylum seekers who have been victims of torture, either in origin, transit or arrival, not only experience a lack of legal protection but are also made vulnerable to protracted situations of exclusion by the enforcement of migratory policies, even by those policies designed for their protection and the promotion of their inclusion (Freedman 2019), such as asylum reception programmes.

There is nothing exceptional about this abandonment of victims of torture but rather the denial of its existence. The Spanish State's approach to torture has been one of impunity that has led to the neglect of victims, to which migrant victims are made especially vulnerable. Strong legal protection is not enough in a context of impunity founded on narratives that construe migrants as criminals and legitimise the violent enforcement of migration policies. As the empirical evidence put forward in this chapter has shown, we must look at what happens on the ground to expose modern forms of torture and their prevalence, before we can refer to the states of Europe today as modern democracies.



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