Torturing Environments and Migration

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Abstract   The concept of Torturing Environments allows a better understanding of migration detention spaces and the impacts they have on people on the move. This chapter analyses the conditions and impacts derived from them, in spaces located in different border areas: Mexico (N=57), Greece (N=160) and Spain (N=110). The results indicate that the spaces analysed could be considered as torturing environments which generate tear and wear on people on the move. These spaces do not represent isolated cases but are examples of how migration policies use detention as part of a deterrence policy.

Keywords   Torture. Borders. Crimes Against Humanity. Readmission agreements. Principle of non-refoulement.

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1   Introduction. Limits and Difficulties in the Conceptualisation of Torture

There are different approaches or frameworks from which torture and ill-treatment can be understood. In the legal sphere, the definition of the 1984 *United Nations Convention Against Torture* is the legal reference (United Nations 1984). Article 1 of the *Convention* defines torture as

> any act by which severe pain or suffering is intentionally inflicted on a person for such purposes as obtaining from him on a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, or with his consent or acquiescence. Pain or suffering arising only from inherent or incidental to lawful sanctions shall not be considered torture.

This definition revolves around the acts that the perpetrator performs on the victim and presents considerable operational problems, the two most important of which are the definition of the severity of the suffering and the motivational criterion. It is a concrete definition in some respects, but deliberately ambiguous in others, due to the belief that too narrow and operational a definition would allow governments to practice torture that easily circumvents the criminal aspects. At the same time, this definitional ambiguity serves as a political logic.

In 1969, the European Commission of Human Rights, a special tribunal assessing the admissibility of cases of 'torture' or 'ill-treatment' to the European Court of Human Rights (ECHR), established in different judgments a progressive approach, the first historical precedent setting jurisprudence, defining three diverse levels of ill-treatment:

Level 1   Degrading treatment: treatment that manifestly humiliates a person or compels him or her to act against his or her will or conscience.

Level 2   Cruel or inhuman treatment: treatment that deliberately causes severe mental or physical suffering that is unjustifiable in that particular situation.[1]

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[1]   The concept of "unjustifiable in the particular situation" disappeared from future definitions and is not currently applied in international law, although it was at the heart of the debate in the United States in the context of the so-called 'war on terror', where,

Level 3   Torture: inhumane treatment that is intended to extract information or confessions or to inflict punishment and is generally an aggravated form of inhumane treatment.

With this definition, the Court established that the key point in level 1 (degrading treatment) is dignity, and the act does not necessarily have to be intentional. Levels 2 and 3, on the other hand, are indistinguishable with the only difference being that 3 (torture) is an "aggravated" form of 2 (inhuman treatment).

However, this distinction was diluted in 1984 when the UN finally adopted the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which does not make explicit the distinction between 'torture' and 'ill-treatment' (see Art. 1, above). Article 16 of the *Convention* equates torture and Cruel, Inhuman or Degrading Treatment (CIDT) by stating that any State party is obliged to prevent both. However, the degree of the obligation of signatory States is not the same for both. Although the *Convention* unequivocally proscribes, in international law, both torture and CIDT (even in times of emergency or war), the obligation to prosecute and prosecute torture and bring offenders to justice (Arts 4-9), the principle of non-refoulment (Art. 3) and the prohibition on the use in legal proceedings of evidence extracted by torture (Art. 15) apply only to torture and not to CIDT. This highlights the importance of making a clear legal distinction between torture and other forms of CIDT in the application of the *Convention*.

2   Torturing Environments as a New Tool for Analysis

An alternative approach to the one developed in the previous point is the concept of 'torturing environments'. This refers to those spaces in which conditions are created that would meet the legal definition of torture (Pérez-Sales 2016). It is composed of a set of contextual elements, conditions and practices that diminish or override the victim's will and control over one's life and compromise the self. This environment will constitute CIDT or Torture when it has been generated to achieve any of the objectives specified in international law and those exemplified by the *Convention against Torture*: obtaining information,

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in order to defend the legalisation of torture under certain circumstances, some experts appealed to the principles of 'necessity' and 'proportionality'. Today, the absolute prohibition of torture is a norm of *jus cogens*, which means that even when a State is not a party to one of the various treaties that specifically prohibit torture and other forms of ill-treatment, it must not resort to such practices or tolerate their use by anyone on its territory. This means that there are no exceptions, neither in times of peace nor in war, nor in any kind of emergency, not even when terrorist acts are committed.

confession, punishment, intimidation or coercion and discrimination.

To exemplify this view: if a person receives little food and is in poor conditions, is subjected to living conditions without privacy, without access to information, is separated from their children, is subjected to conditions of noise, temperature or humidity that prevent restful sleep and is subjected to treatment that is violent and humiliating, hardly any of these conditions in isolation will be considered as an element of torture per se by a legal actor. They will be considered, taken one by one, to be incidental elements of a prison environment and at the very least they can be considered as forms of CIDT. The reality is that we could speak of an environment of torture when the cumulative and combined effect of all these conditions creates an environment that causes severe physical and psychological suffering, in which one of the purposes required by the *Convention* definition can be demonstrated, as well as intentionality, without this being a necessary condition for recognising a situation of inhuman or degrading treatment when there is direct State responsibility for the existence of those conditions (IACHR 2009).

To use a definition for epidemiological purposes, any element of everyday life can be part of a torturing environment if it has been used as a means of provoking or aggravating physical or psychological suffering, and/or if it is used specifically for the purposes referred to as torture.

This approach is useful for the analysis of torture because the impact of torture is not related to a single technique but to the cumulative effect of a combination of techniques that if used alone would not produce the same effects on the integrity of the person, and it is also of particular relevance when the idea of torture is still falsely anchored to the idea of the production of extreme physical pain. The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment himself, in his March 2020 report (United Nations 2020) urges the use of this conceptualisation as a way of ensuring that situations of torture are identified and responded to holistically, rather than as a series of isolated techniques and circumstances, each of which may or may not amount to torture.

3 Measuring Torture. The Torturing Environment Scale

Linked to the more classical definitions, torture has traditionally been measured by using lists of torture methods in interviews with victims, where torture is assessed by adding up the number of methods a person has been subjected to as if they were all equivalent. This assessment of torture only considers the number and type of acts of torture. A tool closer to the victims' experience should also consider key variables relating to the torture's environment and the individual's subjective experience. By this we mean, for example

(a) the patterns and type of relationship imposed between the person who tortures and the one who is tortured; (b) the circumstances surrounding what we call the torturing system (political persecution, ethnic cleansing, police abuse etc.); (c) whether or not the techniques aim to attack the identity of the person; and (d) the severity of each experience both from an objective point of view and from a personal subjective experience point of view.

In this sense, the idea of torturing environments, and the possibility of measuring them, is a major step forward in the contemporary conceptualisation of torture. It provides us with a multifaceted and comprehensive way of addressing the problem of determining the existence of torture in general (and psychological torture in particular) and the conditions that encourage it. It is under this conceptual model that the construction and development of the Torturing Environment Scale (TES) are driven (Pérez-Sales et al. 2021).

The TES aims to fill the current gap with a tool that helps to visualise the combined effects of torture methods. The model is based on a new paradigm that seeks to identify the human function under attack and to group torture methods, accordingly, using a teleological approach, i.e., organised according to a finite number of possible targets and their intended impact on the individual. It does not attempt to compare experiences of torture with each other or to measure the severity of suffering because each victim's experience is unique and impossible to measure. The scale provides an overview of factors indicating the risk of torture. It can be used either to provide an individual profile (e.g., in a forensic assessment) or a profile of a particular environment (e.g., for monitoring visits to centres).

The scale was elaborated based on the testimony of people subjected to torture from different places and historical moments. A content analysis was conducted to identify the core elements that they reported as having caused physical or psychological suffering and personal breakdown. We also analysed testimonies of perpetrators in which they explained their conception of torture and how they sought to bring the person to the limit of tolerance and breakage. Finally, we worked with documentation from centre monitoring organisations and visit reports. This work resulted in a scale composed of fifty-four indicators of torture, six legal indicators and twelve elements of medical and psychological corroboration. Currently, after years of application, a second revised version of the scale is being elaborated in which, as a lesson learned from its systematic application, the coercive interrogation scale is removed, and greater emphasis is placed on aspects linked to dignity and control.[2]

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2 Virtual access to the scale, associated materials and updates to the scale could be done through the GAC research web: http://www.psicosocial.net/investigacion.

4 Torturing Environments in the Context of Migration

Migration processes are often accompanied by episodes of ill-treatment and torture. In some cases, this is the reason for people to flee their country of origin, while in others it is one of the worst situations to which people fall victim during their migratory journey.

As the Special Rapporteur on Torture has pointed out in his latest thematic report on migration (United Nations 2018), borders have become sites of serious human rights violations. Mass deportations and detention in specific places for migrants take place in these spaces.

These immigration detention environments are places of exceptionality, where people are dehumanised, as they are treated differently from other human beings. Depending on the conditions in which they are held and the treatment they receive, these people are subjected to an elevated level of physical and psychological suffering that meets the second assumption of the UN *Convention*'s definition of torture.

Finally, when people arrive in supposedly safe countries, in many cases there is no guarantee of a rehabilitation process adequate to the impacts of previous experiences of ill-treatment and torture, nor is access to the range of basic human rights (such as the right to health, housing, education, rehabilitation etc.) or protection against further abuses guaranteed. In this way, migrants are increasingly exposed to detention and even to the possibility of being returned to the situations of torture from which they escaped in the first place.

4.1 Case Studies. *Estaciones Migratorias* in Mexico, Moria Camp in Greece, Reception Centres on the Spanish Southern Border

The research team of the Grupo de Acción Comunitaria (GAC) has spent years assessing the reception conditions in different places where migrants are held and the impact they have on people. This work has been conducted from the perspective of torturing environments, through the application of the TES.

A line of work began in 2017 in the *estaciones migratorias* (Eng: migration stations) in Mexico (Manek, Tobasura Morales 2022; Manek, Galán-Santamarina, Pérez-Sales 2022), and extended in 2020 to the refugee camp of Moria on the Greek island of Lesbos (GAC 2021; Pérez-Sales et al. 2022) and in 2021, taking the research to the reception facilities of the Spanish Southern Border (GAC 2022).

4.1.1 Mexico and Migrant Detention Centres as Torturing Environments

4.1.1.1 Context

The current migration control policy in Mexico is based on systematic detention practices in detention centres officially known as 'Estaciones Migratorias' or 'Estancias Provisionales', which are managed by the Instituto Nacional de Migración (INM). The purpose of these centres is to temporarily hold foreigners who cannot prove that they have a regular migratory situation in the country until their situation is resolved. There are currently approximately 32 *estaciones migratorias* throughout the country. In the last five years before the pandemic, the increase in immigration detention and detention operations has responded to various pressures exerted by the United States, which at different times has demanded greater control of Mexico's southern border. 42.33% of the detentions were conducted in Chiapas and Tabasco, while 38% took place in the States that make up the country's northern border. To get an approximation of the scope of these practices in Mexico, before the pandemic, a total of 186,750 arrests were made in 2019, of which 134,751 were of children and adolescents. Finally, of these detainees, 141,223 were deported.

The conditions of immigration detention centres in Mexico, as well as the treatment of the people inside them, have been the subject of concern in recent years by various bodies of the United Nations system, civil society, and the National Human Rights Commission itself as a national institution.

4.1.1.2 Methodology and Objectives

From 2018 to 2022, the research team of the Grupo de Acción Comunitaria (GAC) together with the Grupo Impulsor Contra la Detención Migratoria y la Tortura (GIDMT), developed an investigation into the conditions of detention for migrants in Mexico by exploring the environment of the so-called *estaciones migratorias* and how migration detention affects the mental health and social life of detainees. To this end, semi-structured interviews were conducted with 57 migrants who were or had been detained in a migrant detention centre. Of these 57 people, 45 were men and 12 were women. In these interviews, the TES adapted to Mexican immigration detention contexts was used, as well as a scale of intencionality of acts conducted by personnel inside detention centres.

4.1.1.3   Results

The results of the investigation can be seen in detail in **[tabs 1-2]**. In summary, it is worth noting that the main contextual manipulation referred to by the persons interviewed were the inhuman conditions of detention according to international standards, where almost all of them stated that they had been in cells where the minimum conditions about the size of the cell were not met, there were situations of overcrowding, there was no place to sleep or there was a lack of hygiene inside the cells. Likewise, the persons stated that they were systematically or eventually subjected to the manipulation of environmental conditions, such as extreme temperatures in the cell or the presence of humidity. On the other hand, a large number reported having suffered alterations in their basic physiological functions, being forced to experience hunger, thirst, or being limited in their ability to urinate or defecate. Likewise, they reported having suffered sleep dysregulation, through the impossibility of sleeping due to noise and changes in schedules, among others.

Detainees reported having suffered manipulation of expectations and hope to provoke extreme fear or terror – for example, through the induction of feelings of complete helplessness, the denial of information or the production of absurd or terrifying environments, including prolonged periods of silence and/or waiting. They also reported being exposed to threats against their person, such as threats of isolation, torture, or death, as well as threats against partners or family members in detention. Physical violence was also reported in the form of beatings, including punches, kicks, and slaps.

Table 1   Main violations reported in Mexico's migrant holding centres (N=57)

Attacks on basic human functions	
Inhumane conditions of detention by international standards: overcrowding and lack of privacy	93%
Impairment of basic physiological functions: difficulties in accessing water, hunger, difficulties in urination, defecation, and toileting	80.7%
Manipulation of environmental conditions: suffering due to temperature or humidity conditions, litter, and unsanitary surroundings	82.4%
Sleep dysregulation: inability to get restorative sleep	66.7%
Actions generating fear or perceived loss of control	
Threats against the person	66.7%
Threats against partners, family members, relatives, or friends	42.1%
Situations of perceived imminent death	
Forced witness to violence, torture, or death of others	21.1%
Use of situations that evoke unbearable fear	15.8%
Manipulation of the sense of the passage of time	54.4%

Sensory deprivation and/or sensory disorientation	
Actions causing physical pain and attacks on sexual integrity	
Hits	42.1%
Battles against oneself. Externally forced physical pain	38.6
Strenuous exercise	8.8%
Humiliation related to sexual identity	
Sexual harassment	10.5%
Actions that produce hopelessness and helplessness	
Manipulation of expectations and hopes to provoke extreme fear or terror	82.5%
Distress associated with a lack of information regarding administrative or legal status and/or station rules or regulations	68.4%

Regarding the emotional impact of detention on respondents, they frequently reported feelings of humiliation or shame, sadness, mistrust, fear, anguish, and hopelessness, as well as tiredness. Also, about a quarter of the respondents reported frequent feelings of rage or anger, guilt, or nightmares. Finally, among the most severe impacts, eight people reported having thoughts of suicide. Specifically, five people experienced it sometimes and three people experienced it constantly. One person reported a suicide attempt.

Table 2 Impacts on the mental health of people who were or had been detained in migrant holding centres (N=57)

Mental health impacts	Moderately	Extremely
Fatigue	22.8%	64.9%
Sadness	33.3%	49.1%
Nightmares, intrusive thoughts, or images	37.5%	25%
Mistrust	38.6%	43.9%
Rage or anger towards self or others	31.6%	24.6%
Blame	30.4%	23.2%
Fear	24.6%	52,6%
Anguish and despair	24.6%	52.6%
Despair	17.5%	43.9%
Thoughts of suicide	8.8%	5.2%
Humiliation or embarrassment	38.6%	33.3%

The results of the research indicate that the Mexican immigration detention system in migrant detention centres creates torturing environments. They highlight that in Mexican immigration detention centres there are multiple attacks on basic human functions, physical aggression, actions that generate fear and loss of control, as well as elements that provoke hopelessness and helplessness. All these

elements have multiple impacts on the health of detainees, including serious impacts such as feelings of hopelessness and thoughts of suicide.

These data have been systematically denounced by different international bodies and civil society organisations, without substantial improvements or changes. It can be concluded that immigration detention in Mexico is part of a harmful policy of deterrence that perpetuates inequality and the creation of feelings of fear and powerlessness caused by detention and deportation.

4.1.2 Lesbos. The Camp of Moria. Architecture of Torture in Europe

4.1.2.1 Context

The Moria camp has been active on the island of Lesbos from 2015 until September 2020, when the fires that destroyed it took place. At the end of its days, it eventually became the largest refugee camp in Europe.

The Greek government, in collaboration with the European Union (EU), created the Moria Camp for the management of people arriving from Turkey in the context of the so-called 'refugee crisis' of 2015. During the entire time that the camp was in operation, it received complaints about the living conditions and violence experienced by the people housed there.

In February 2020, the Turkish government threatened to break the agreement with the EU by opening its borders to refugees from Syria in a geopolitical pressure measure, prompting the Greek government to suspend until further notice the possibility of applying for international protection on its territory, thereby blocking large numbers of migrants at the borders and pushing back those trying to enter via the Aegean Sea. Following the tension generated by this situation, Greek camps once again became overcrowded; as Amnesty International noted, the Moria camp, with a capacity of 3,000, held 20,000 people in March 2020 (of whom between 6,000 and 7,000 were under the age of 18).

4.1.2.2 Methodology and Objectives

In 2020, the GAC undertook research to gather information about the conditions in the Moria refugee camp in Lesbos until the fire that destroyed it in September of the same year. Thus, this research presents the data collected in the last period of the camp, which helps to understand how the camp was considered a torturing environment and the circumstances that may have led to the fires.

The study analyses the living conditions of refugees in the camp of Moria (Lesbos) in a sample of a total of 160 people, of whom 80 were women and 80 were men. Semi-structured interviews based on the TES were used together with three supporting instruments: the WASSS scale (WHO, UNHCR 2012), a legal safeguards scale and a camp-specific violence scale.

4.1.2.3   Results

The results of the research can be seen in detail in **[tabs 3-4]**. The data show a context where there are multiple attacks on basic human functions: all the people interviewed reported having been hungry at some point, difficulties in accessing water for drinking, difficulties in urination or defecation, as well as in toileting or showering and having suffered from the temperature or humidity conditions, and almost all of them reported situations of overcrowding and a lack of privacy, impossibility to rest, as well as difficulties in receiving medical attention.

Many elements in the camp generate an environment of insecurity and constant fear. Testimonies were collected of serious threats against them or their families, sometimes including beatings. It is particularly alarming that 41% of women and 8% of men report situations of sexual abuse. A high number of respondents had witnessed violence against other people. These elements give an approximation of the intimidating and violent environment in the camp.

In the same vein, numerous factors prevent a sense of control over one's own life. In this sense, more than half of them were not clear about the norms or rules of the camp because they changed or were not explained, nor did they feel it was possible to establish routines, despite living in the camp for years. Almost all the people had no information about their administrative or legal situation, thus generating situations of legal and/or administrative defencelessness. This situation also favours the appearance of false news and misinformation in the camp. Finally, one-third of the people living in the camp perceived it as an environment of complete submission, giving rise to feelings of humiliation, indignity and/or shame.

Table 3 Conditions and violence reported in the Moria camp in Greece (N=160)

Attacks on basic human functions	
Inhumane conditions of detention by international standards: overcrowding and lack of privacy	89%
Difficulties in access to water	100%
Difficulties in accessing food	100%
Difficulties in urination or defecation, as well as in toileting or showering	100%
Rubbish and unhealthy surroundings	90%
Suffering from temperature or humidity conditions	100%
Sleep dysregulation: inability to get restorative sleep	97%
Difficulties in receiving medical care	90%
Actions generating fear or perceived loss of control	
Manipulation of expectations and hopes to provoke extreme fear or terror	82.5%
Threats against the person or partners, family members, relatives or friends	65%
Theft	90%
Distress associated with lack of information	68.4%
Inability to establish routines	60%
Forced witness to violence, torture, or death of others	78%
Use of situations that evoke unbearable fear	15.8%
Actions causing physical pain and attacks on sexual integrity	
Beatings	36%
Domestic violence	17%
Sexual abuse	41% women 8% men
Rape	12% women 5% male
Sexual exploitation	5%
Actions that produce hopelessness and helplessness	
Lack of information on the administrative or legal situation	
Lack of information on norms or rules of the field	64%
False information or misinformation	75%
Legal or administrative defencelessness	33%
Attacks on identity and the need to belong	
Full submission environment	31%
Living under rules of radical religious obedience	10%
Guilt-producing actions	27%
Humiliation, indignity or shame	20%
Cultural isolation	
Actions of racism, xenophobia or homophobia	42%

All these elements described above generated extremely elevated levels of physical and emotional suffering. Almost all of the people interviewed reported moderate or extreme fear, as well as frequent or very frequent emotions of hopelessness. One-third reported repeated and continuous suicidal ideation. Suicidal ideation is the tip of the iceberg of an extremely complex emotional distress made up of emotions of fear, anger, apathy, and hopelessness, which are present in almost everyone.

Table 4 Impacts on the mental health of people living in the Moria camp (N=160)

Mental health impacts	Moderately	Extremely
Fear	62.5%	31.9%
Rage	64.4%	31.3%
Loss of interest	62.5%	35.0%
Despair	62.5%	30.6%
Suicidal thoughts	66.9%	29.4%
Inability to carry out daily activities	64.4%	35.0%

Through the data provided in this report, it can be affirmed that the Moria Camp, which has been operating on the island of Lesbos between 2015 and 2020 on the site of a previously existing reception centre for migrants, was a space that, from a medical-psychological analysis, constituted a torturing environment. The indirect deprivation of sleep, the lack of minimum and adequate food, the communicative isolation, and the exposure to extreme temperatures without the possibility to protect oneself from them added to the constant humiliations, threats, and exercises of violence by public officials, generate a combined effect that is what allows us to define the camp as an environment of torture.

The population that has gone through Moria has been the victim of strong impacts on their own identity, seeing their human capacity to trust others broken, radically changing their vision of the world. In this sense, the perception that there are people who not only allow this to happen but are direct perpetrators of violence is one of the greatest impacts on the victims.

These data have been denounced by international organisations for more than five years, without any effective action being taken to guarantee the rights of the people living in the camp. European governments and authorities have allowed these people to remain for months, and even years, locked up in openly abusive conditions. At the same time, Moria is not an isolated case, but an example of the EU's migration policy on its territory.

4.1.3 Spain's Southern Border. The Impacts of Reception

4.1.3.1 Context

Migration is currently a global priority and Spain's southern border, due to its geographical position as a southern land and sea border with Africa, is a strategic enclave for the European Union in the framework of European migration control policies. People arriving across this border have in many cases experienced serious violations of their rights (discrimination, persecution, slavery or labour exploitation, sexual exploitation, detention without fair procedures, ill-treatment, or torture) both in their countries of origin and throughout their migratory journey. Therefore, upon arrival in Europe, they present severe psychological suffering and situations of vulnerability, which means that reception in the territory takes on great importance for reparation and rehabilitation, entailing a great ethical and legal responsibility.

In Spain, there are different border realities throughout the territory, as there are significant differences between the peninsular borders and those outside the European continent: the Canary Islands and the autonomous cities of Melilla and Ceuta. All of them are in North Africa and are commonly known as the Southern Border. Over the last few years, these territories have experienced migratory movements described as exceptional events, which have been described as 'migratory crises', even though these flows at this point have always remained constant. As a result, reception is often presented as a purely humanitarian response of an emergency nature.

The lack of foresight, coordination and institutional organisation leads to a sense of overcrowding, insecurity, and loss of control among the host population and leads to the dehumanisation of migrants, whose rights are repeatedly violated.

4.1.3.2 Methodology and Objectives

Within this framework, in 2021, the GAC began a research project to evaluate the reception conditions of the Spanish Southern Border, in the city of Melilla and the Canary Islands, focusing on the impact they have on migrants, from a psychosocial and cross-cultural perspective. To this end, a total of 110 people accommodated in different facilities of the Spanish Southern Border were interviewed, of which only two were women, as well as a group of key agents who conducted their activity in these territories. Semi-structured interviews based on the TES were used together with scales and quantitative measures and in-depth interviews.

4.1.3.3   Results

Through the results of the research, shown in **[tabs 5-6]**, it can be observed that the conditions of the accommodation points for migrants are in many areas insufficient, including insufficient drinking water or access to it, insufficient or inadequate food, overcrowding and lack of privacy, poor access to personal hygiene and lack of hygiene in the environment, difficulties in resting, fear derived from the insecurity in the centres. There are also situations of dehumanisation by different institutions, separation of members of the same family unit, and difficulties in communicating with the outside world.

A lack of adequate legal safeguards (framework of exceptionality with arbitrariness in the application of operating rules, regulations and procedures, insufficient legal representation and lack of information and conditions for processing applications for International Protection) is also detected.

Table 4   Conditions reported in reception facilities at the southern Spanish border (N=110)

Attacks on basic human functions	Melilla	Canary Islands
Inhumane conditions of detention by international standards: overcrowding and lack of privacy	90.6%	69.1%
Difficulties in access to water	94.3%	33.9%
Difficulties in accessing food	81.1%	77.2%
Difficulties in urination or defecation, as well as in toileting or showering	96.2%	71.9%
Rubbish and unhealthy surroundings	84.9%	41.1%
Suffering from temperature or humidity conditions	92.5%	77.8%
Sleep dysregulation: inability to get restorative sleep	86.8%	58.5%
Difficulties in receiving medical care	71.8%	71.1%
Actions generating fear or perceived loss of control		
Perception of insecurity	92.5%	53.7%
Actions that produce hopelessness and helplessness		
Lack of legal accompaniment and information regarding the administrative or legal status	50.9%	48.6%
Lack of information on norms or rules of the field	90.6%	51.9%
Attacks on identity and the need to belong		
Difficulties in communicating with family and friendship network	96.2%	67.9%

All of the above generates an environment of abuse that leads to physical impacts and significant psychological suffering, with frequent reactions of apathy and demotivation, anger, hopelessness, fear and in at least one in four people self-harm or suicidal ideation, as well as deterioration in individual and collective identity.

Table 6 Impacts on the mental health of the people hosted in the facilities of the southern Spanish border (N=110)

Mental health impacts	On a regular or continuous basis	
	Melilla	**Canary Islands**
Fear	13.2%	19.3%
Rage	9.5%	5.4%
Loss of interest	15.1%	18.2%
Hopelessness – Suicidal ideation	20.7%	18.5%
Inability to carry out daily activities	15.1%	25.9%
The perception that conditions have a negative influence on their mood	32.1%	59.1%

Based on the results of this research, there is a situation of inhuman, cruel, or degrading treatment in the reception facilities analysed in Melilla and the Canary Islands that goes beyond a specific critical situation and is endemic. The conditions of the reception centres for migrants are insufficient in many areas, including insufficient access to drinking water or poor conditions, insufficient or inadequate food, overcrowding and lack of privacy, poor access to personal hygiene and lack of hygiene in the environment, difficulties in resting, fear derived from the insecurity in the centres. There are also situations of dehumanisation by different institutions, separation of members of the same family unit, and difficulties in communicating with the outside world. An absence of adequate legal safeguards is also detected (a framework of exceptionality with arbitrariness in the application of operating rules, regulations and procedures, insufficient legal representation and a lack of information and conditions for processing applications for International Protection). All these factors are key aspects because of their implications in terms of dignity and impact on the quality of life and the level of physical and psychological suffering.

This study points to the need to change a culture based on emergency management with pragmatic and utilitarian criteria that prioritise logistics over a humane and caring approach, to management based on the idea of reception that changes the current limbo of the border for the creation of safe spaces, free of fear and anguish, in which migrants in general and victims of ill-treatment and torture and other forms of human rights violations specifically, receive dignified and humane treatment.

4.2 Migration Detention Spaces as Torturing Environments

In all the studies, although with substantial differences, especially in the last one, it is concluded that the conditions of these spaces of migratory detention provoke a psychic breakdown. There is wear and tear derived from attacks on basic human functions (poor nutrition, poor access to water or chronic sleep deprivation) and conditions are identified that attack the capacity for control[3] (absence of rules, lack of information, lack of access to rights, legal defencelessness) or security (overcrowding, robbery or aggression), which generates feelings of helplessness, fear or anguish associated with serious physical and psychological suffering.

Reception conditions in these contexts undermine people's dignity, due to the perception of not being treated with respect for their identity (not being listened to, considering that the conditions are not acceptable for a human being, not feeling that their cultural values are respected etc.) or collective identity (preventing communication with loved ones, situations of discrimination or violence based on the group to which they belong etc.).

In addition, migrants will more often than not suffer from the most negative aspects of the social determinants of health in host countries: exposure to a strict legal and bureaucratic framework, overcrowded and unsanitary housing conditions, lack of employment or educational opportunities, racism or discrimination, caused by interaction with people, the difficulty of access to institutions or internalisation of fear (Walsemann et al. 2017; Pérez-Sales 2018).

Finally, about the intentionality or motivation of the generation of these environments, this is necessary for the qualification of torture or ill-treatment, not being a necessary condition to recognise a situation of inhuman or degrading treatment when there is a direct responsibility of the State in the existence of these conditions, which would be subject to debate. However, beyond the specific context, parallelism has been found in studies conducted in different countries and borders using the same methodology and theoretical framework, which suggests the existence of a purpose of migration policies of a deterrent nature (UNHCR 2014; Edwards 2019; Akkerman 2021).

It is this combination of elements described above that together gives rise to *Torturing Environments* in migration contexts [**fig. 1**].

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3 The sense of loss of control over one's own life is a clear risk factor for developing both physical and emotional distress and is therefore an important determinant of the health of people affected by this context (Marmot 2004).
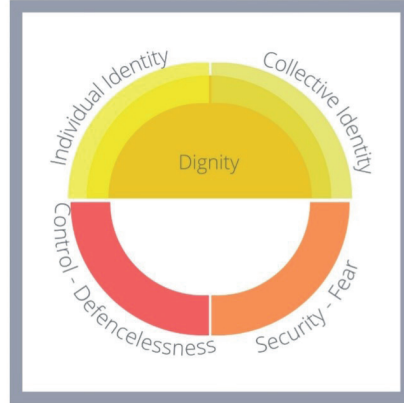
Wear and tear caused by the environment

5 Conclusions

The concept of a Torturing Environment reflects the reality of those spaces (prisons, detention centres for migrants etc.) which by their nature intentionally provoke severe physical and/or psychological suffering with attacks on the basic and higher functions of human beings by State actors or those with delegated functions of the State.

It is necessary, in this sense, to consider that the concept of Torturing Environments goes beyond the classic conceptualisation of torture as the infliction of physical pain to break a person's will, to consider, from a holistic and integral vision of the human being, all the elements of psychological torture that contemporary science shows to be essential elements for the understanding of torture in the twenty-first century. In this sense, there is both medical (Pérez-Sales et al. 2021) and legal evidence[4] that support and give substance to this

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[4]   It should be recalled that the *Convention against Torture* speaks of "severe physical or mental suffering" in its Art. 1, but, in addition, European jurisprudence takes up the long legacy in this area of the Human Rights Committee (Miguel Angel Estrella v. Uruguay case as the first resolution in this regard: Communication No. 74/1980, UN Doc. CCPR / C / OP / 2 at 93 (1990)) or the Inter-American Court of Human Rights, incorporating the concept of 'psychological torture' in its judgments (see Gäfgen v. Germany, application no. 22978/05, 1 June 2010, among others). In the same vein, a very interesting report by the UN Special Rapporteur on Torture (United Nations 2020, 6-7) has further elaborated on this debate, stating: "21. First, the distinction between psychological and physical methods of torture should not obscure the fact that, as a matter of law, 'torture' is a unified concept. All methods of torture are subject to the same pro-

notion. Thus, the environment of torture integrates physical and psychological elements, but also the legal defencelessness that would contribute powerfully with its arbitrariness to scenarios or environments of torture.

The different spaces analysed are located in different border frameworks and contexts, supporting the hypothesis that none of them is an isolated case, but rather examples of how migration policies use detention as part of a policy of harmful deterrence that perpetuates inequality through the means of the detention environment and the creation of feelings of fear and powerlessness caused by detention and deportation.

The central purpose, in the case of centres for migrants or refugees, is to apply policies of a dissuasive nature that generate in people fleeing contexts of poverty or violence the dilemma of having to choose between the situation they are fleeing or the suffering caused by the receiving society as an instrument of control.

Torture is a norm of *jus cogens* and has been outlawed by international law. The European Court of Human Rights makes it explicit in several rulings that this prohibition cannot be circumvented by arguments about budgetary problems or based on a massive influx of migrants, reasoning that this has been frequently reiterated by different governments to justify the state of reception camps or centres, and detention centres.

Furthermore, there are numerous decisions of the European Court that establish violations of Article 3 of the *European Convention on Human Rights* due to the material conditions (specifically, overcrowding, together with lack of light and ventilation or lack of privacy) of persons when they are in State custody, with restriction of movement, as in this case. The fact that these resolutions refer to situations of 'detention' (although all the cases indeed allude to situations of 'administrative' detention pending expulsion) does not make it possible to ignore the prohibition they establish of confining migrants, many of whom have requested international protection, in degrading conditions such as those that have been identified in the Moria camp, the migration stations or the southern Spanish border.

hibition and give rise to the same legal obligations, irrespective of whether the pain or suffering inflicted is of a 'physical' or 'mental' nature, or a combination of both. Thus, the purpose of the distinction between 'psychological' and 'physical' methods of torture is not to suggest any difference in terms of legal implications or wrongfulness, but to clarify to what extent the generic prohibition of torture covers methods not using the conduit or effect of severe physical pain or suffering".

6   Recommendations

This raises, for the first time, the need to consider torture settings within the international legal and human rights framework. Torturing environments must be debated within the framework of the international institutions of the United Nations System, creating a framework of enforceability that complements that which is currently contained in Article 1 of the *United Nations Convention against Torture*, adapting it, through interpretation by the corresponding bodies, to the new realities, in line with the observations of the Special Rapporteur on Torture regarding the existence of torturing environments in spaces for migrant detention.

It is also necessary to promote awareness among regional and State legal operators of the minimum conditions of detention in the legislative framework and of the various situations in which torturing environments can occur and their typical and jurisprudential adaptation to the new social, administrative, and penal realities in which they occur.

An explicit mention of the existence of torturing environments should also be included in the mechanisms for the prevention of torture, in the framework of the monitoring and inspection of places of deprivation of liberty, and, in particular, of the United Nations Subcommittee for the Prevention of Torture, the Committee for the Prevention of Torture of the Council of Europe and the National Mechanisms for the Prevention of Torture, urging the incorporation of guidelines for the detection of torturing environments in the visits carried out.

In the context of migration as a measure to guarantee the rights of the migrant population and applicants for international protection, governments involved in the reception of this population should be urged to adopt effective measures to ensure respect for their human rights. About the spaces for migrant detention this implies:

- Establish systems for assessing and monitoring the conditions of refugee camps and other spaces and facilities within the reception system that ensure essential quality standards and respect for human rights.
- The closure of camps and facilities that do not comply with the minimum guarantees set out in humanitarian action consensus documents (Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response, IASC Guidelines and others), international regulations and those set out in Directive 2013/33/EU adopting standards for the reception of applicants for international protection, ensuring the dignified relocation of their inhabitants immediately.
- Guarantee the existence and transfer of the necessary resources to provide dignified living conditions for migrants during the

administrative processing of their respective regularisation or international protection processes.
- Ensure the adequacy of reception systems and conditions to the different social needs of people, sensitive to gender, sexual, religious, and cultural diversity.

In short, we point out the need to implement migration policies based on an idea of reception that changes the current limbo that borders represent, that guarantees the creation of safe spaces, free of fear and anguish, in which migrants receive dignified and humane treatment.

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