Torture, Migration, and State Violence in Contemporary Spain

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Abstract   Whilst torture is an age-old phenomenon, prevalent in Western societies since the oldest available records, the twentieth century brought about significant transformations in its conceptualisation. Torture remains the subject of complex and controversial debates, both from academic, political, and legal approaches. Dwelling on the current problematisations of this concept that recognises torture within the logic of its social production, this text explores the connection – and its omission – between State violence and torture against migrants. The chapter examines the case of the Spanish State's failure to protect migrant victims of torture's rights, as well as the physical aggression at borders, by which migrants are subjected to different forms of violence by the migration control apparatus.

Keywords   Torture. Migration. Asylum seekers. Violence. Spain. Neglect.

Summary   1 Migration and Torture as a Continuum of State Violence. – 2 Spain's Approach to Torture. Conceal and Impunity. – 3 Migration Policies and the Disposability of Migrant Lives. – 4 Asylum Seekers. Re-Victimisation, Torture, and Abandonment. – 5 Conclusions. State Violence against Migrants in Contemporary Spain.

1   Migration and Torture as a Continuum of State Violence

Whilst torture is an age-old phenomenon, prevalent in Western societies since the oldest available records, the twentieth century brought about significant transformations in the way this is comprehended

and conceptualised. Yet, despite continuous efforts to reach common understandings, interpretations, and categorisations of torture, it still remains the subject of complex and controversial debates, both from academic, political, and legal approaches. In the midst of these discussions, the connection between torture and migration has increasingly become the focus of debate in the last two decades and, consequently, there has been an increase in academic studies on this nexus, largely as a response to its growing global perceptibility and its multiplicity in practices. This emphasis on the phenomenon, however, does not mean that the connection between torture and migration is anything new. This connection has, in fact, been present in international covenants, particularly with relation to the prohibition of torture, which admittedly recognises the link between migration and torture through the ban on refoulement.

This right, also recognised under the 1951 *Refugee Convention*, prohibits States to enforce the deportation of any foreign subject to a place where they may be at risk of torture or inhuman or degrading treatment. The need for this provision arises from an increasing restriction on free movement through the securitisation of State borders that makes it possible for States to forcefully remove foreigners from their territory. In turn, increased border control has played on a criminalisation of migration and the legitimisation of State violence against migrants in the pursuit of protecting sovereignty. This has been articulated from the failure to protect torture victim's rights and structural violence, to the physical aggression at borders, in which migrants have long been, and are still today, subjected to different forms of violence by the migration control apparatus. In this, torture is not the only, but certainly the most visible and aberrant event of a continuum of violence. Yet, the central question here is not the limits nor the different expressions of torture in relation to migrants, which would indirectly legitimise any violence that is not officially condemned as torture or inhuman treatment, but the conditions of the possibility that legitimate the continuum of violence that leads to extreme violence and death as part of State action and defines the global migration control regime.

The purpose of this chapter is not to provide an epistemological review of torture and migration, but to present an in-depth analysis of this phenomenon in a current setting. Yet, in order to set up a discursive ground for it, it's necessary to stem from a reflexive consideration of the key underpinnings of the concept. This implies going beyond common perceptions of torture, its victims, perpetrators, and the societies where it takes place, to consider and explore the intertwining between the two complex realities that torture and migration presuppose.

Events of torture have been commonly presented by public, political and media debates as exceptional deviant acts, barbarous aberra-

tions alien to democratic societies (Tullock 2005). Yet, from an analytical point of view, this assumption largely simplifies the phenomenon. Torture cannot be considered as an exceptional event, nor can torturers be simply dismissed as monsters. Torture is performed by ordinary people in the normal exercise of their work duties because, as Arendt (1964) vindicated, far from being monstrous, evil is often banal. Such acts are provoked and eventually normalised by the society and the circumstances (Huggins, Haritos-Fatouros, Zimbardo 2002), such as those 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, deviating from the basic values of modern Western democracies, from a sociocultural analytical viewpoint torture has to be understood as a criminal act, yet consistent with contemporary Western values and Western perceptions of the State, citizenship, and migration (Mendiola 2014). From this perspective, 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 (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 '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, 218).

In a context of increasing criminalisation of the poor and those considered 'irregular' or even 'illegal', 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 certainly 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 (Jubany 2017; 2020). They stand at the intersection that challenges the State's sovereignty by their presence, particularly as poor and racialised populations, while living and working in situations 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, subtler forms, in what is frequently referred to as "structural violence" (Galtung 1969). It is arguable that, following Parry, "the 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" (Parry 2010, 17). In other words, the fact that violence in its different forms is being used as a mechanism of migration and border control should shadow any debate on whether a particular instance of its practice is legally framed and condemned as torture. Thus, as pointed out, the question is not on the limits of torture, but on its legitimation in the continuum of State violence.

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. Most accounts of torture and migration concentrate 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 and the consequences this has for their asylum applications and incorporation in countries of settlement (Daniel, Knudsen, Cher 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, as well as problems and considerations with reference to health care (Vannotti, Bodenmann 2003). Similarly, 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, this issue is rarely addressed in regard to the prohibition of torture (Morales 2016; Sanggaran, Zion 2016). Within this framework, this paper presents an ethnographic approach that address the mechanisms that underpin the absence of protection and neglect that asylum seekers suffer in Europe in light of this continuum of State violence and the possibility of torture within it.

Grounded on the results of an ethnographic investigation of asylum seekers as victims of torture in Spain, this chapter revisits both these issues to analyse the governmental devices that define the re-

ality of migrants as victims of torture. It provides an updated analysis of the prevalence of extreme forms of violence in border protection practices and the lack of recognition of these events as forms of torture and a revised examination on how, despite strong legal protections being in place, practices of victim protection for victims of torture, particularly migrant and refugee victims, fail to provide basic guarantees and often incur in re-victimisation. The empirical investigation that grounds the results presented here 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 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.

To illustrate this, 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; Garcés Mascareñas 2015). As in other EU bordering countries, violent practices of border control have been a prevalent feature of Spain's migration policy. 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. Yet, death and torture are only the tip of the iceberg of the continuum of violence that defines the global migration control regime. In the normalisation of extreme violence, death becomes a legitimate means to border enforcement. The re-victimisation and lack of support, the dehumanisation, as well as the criminalisation of migrants, make it possible for modern States to incur in forms of torture without consequence as they neglect torture victim's rights, particularly when migrant.

The chapter begins by offering an overview of the context of torture in Spain: its legal framework and limitations, and its violations. Building on this analysis, it exposes the double vulnerability that migrants face in Spain, as potential victims of torture and as unprotected victims of torture. The chapter then sheds light onto the mechanisms that underpin the particular types of violence that arise in the enforcement of migration policies. Finally, grounded on ethnograph-

ic evidence, the paper discusses this double vulnerability in the particular case of asylum seekers. The precarious legal status of asylum seekers 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 re-victimisation and 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 paradigmatic due to the specific right of protection they enjoy as asylum claimants and the particular need of protection that all asylum regulations recognise for victims of torture.

2   Spain's Approach to Torture. Conceal and Impunity

To understand and recognise how modern forms of torture have developed and taken a central place in the enforcement of migration policies in Spain, we must first review, analyse and recognise the importance of the legal and social background of torture in Spain of the last 50 years. 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 1970s, 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 Article 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 a form of torture, despite both of them are considered in international covenants ratified by Spain. 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 the gaps in the legal protection against torture, linked to its conceptualisation, is the authorisation and common practice of *incommunicado* detentions, a particular situation of deprivation of liberty in which the detainee is detained in solitary confinement, has no possibility to access an attorney, an independent physician or family members.[1] 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 (Bergalli, Rivera Beiras 2006). Also, and crucially, this contributes to a normalisation of behaviours and punishments that legitimise the excessive use of violence by public officials in the exercise of their duty.

However, the underdevelopment and lack of revision of the concept in the national legislation are not the only factors that hinder the possibilities of reporting and recognising torture and inhuman 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.[2]

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1 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.

2 All interviews have been codified to guarantee the anonymity of the interviewees. SG-I-1. Own codes are included in reference to each quote for access and data management purposes.

The sharpest 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.[3] This systematic lack of investigation relates to an invisibility of this practice by which, as Bergalli and Rivera Beiras (2006, 73) put it, "public authorities consistently deny the existence of torture […] by the lack of condemnatory rulings". This situation 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.[4]

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 some offenders previously found guilty of torture or inhuman treatment by national courts (Bergalli, Rivera Beiras 2006), projecting a strong message of impunity to both torturers and the victims, often perceived as a form of institutional violence in itself, and contributing to the secondary victimisation of complainants. 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 an Amnesty Law to pardon torturers in Spain. A decision backed by NGOs that have protested against pardoning rulings on several occasions, urging Spain to ensure the non-applicability of statutory limitations to torture:

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3   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: European Court of Human Rights Database – HUDOC). 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.

4   EX/B/TS/FN.

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.[5]

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 Migration Policies and the Disposability of Migrant Lives

Violence, in its different forms, permeates all bordering practices. It is an undeniable fact that the number of torture allegations by migrants or their representatives In Spain has increased almost every year, often exceeding half the total number of complaints registered.[6] These complaints relate, in the most part, to violence at border crossings, including the practice of pushbacks, and situations of confinement, especially in detention centres. In this context, the increased criminalisation of migration and the violent acts by public officials in the enforcement of migratory policies are still normalised every day, and often legitimated as 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 the securitisation of the extended EU borders (Gruszczak 2017).

This is particularly obvious in the practices land and maritime border policing, where physical violence and death are repeatedly inflicted in detention and deportation and referred to as a 'deterrence mechanism'. Yet extreme violence permeates beyond these onto subtler expressions through neglect. As Spain has reinforced its position as one of the main gateways into Europe as well as a central site in the development of border control technologies and strategies in the EU (Andersson 2014), migrants have become one of the

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5 SG-I-1.

6 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*).

main group of complainants in allegations of torture and inhuman treatment in Spain, as the reports by the *Coordinadora para la prevención de la tortura*[7] show.

Every other day, 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 or attempt the dangerous journey across the Atlantic Sea to the Canary Islands. In Ceuta and Melilla, the border fences are protected with technological gadgets, barbed wire, and guarded by armed police. The Mediterranean and Atlantic Sea are operated by Spanish and Moroccan security forces, coastguards and Frontex who control the arrival of boats and the activation (or not) of rescue operations. Border control at sea has been the most controversial in recent years due to the increasing number of deaths brought about by the tightening of border control measures, the restrictions in private rescue operations and the cancellation of public ones. Whilst human rights organisations complained about the lack of governmental action in rescuing stranded boats and the prohibition to act that some rescue NGOs operating in the Mediterranean have faced, the Minister of Foreign Affairs issued an order to stop rescue operations by the coastguards in the Southern Coast arguing that not rescuing migrant boats in distress would, in fact, contribute to saving migrant lives as the existence of rescue operations was the cause of the increasingly fragility of navigation technologies used by migrants and smugglers and, therefore, of their deaths at sea (Escrivá 2019). The disposability of migrant lives dominates the border control discourse and reinforces the use of active forms of violence and passive forms of violence (such as not-rescuing boats in distress) as legitimate means of policing borders.

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 – pushbacks, not violence to enforce them – has been condemned by various international bodies, including the ECHR (*N.D. and N.T. v Spain*. App nos 8675/15/ and 8697/15; ECtHR, 17 February 2020)[8] as contravening the right to asylum. Despite this, these practices not only continue to be in place, but further deterrence mechanisms aiming at producing physical harm, such as concertina wire have been introduced, repeatedly causing serious injuries to migrants trying to cross the border across the fencing.

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7 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*.

8 This decision was, however, later overturned by the ECtHR Grand Chamber in 2020, reversing the Court's previous decision (Raimondo 2020).

Similarly, pushbacks are common across the Mediterranean Sea. Across the European Mediterranean border, migrants detected on their way towards EU member States have been returned. The collaboration between member States and third countries such as Morocco, Mauritania, Libya, and Turkey allow for the forced return of migrants at sea (Andersson 2014). While most of the border control and its violence continues to be externalised to third countries, violent enforcement of migration control by member States and Frontex has worsened during the COVID-19 pandemic when mobility restrictions seemed to legitimise an ever harder take on border control.

However, as in the Tarajal case,[9] where 15 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" (Europa Press 2015).

A further interpretation of modern forms of torture refers to the enforcement of deprivation of freedom without trial and the living conditions in detention facilities, known as CIE (*Centros de Internamiento de Extranjeros*). All EU countries have detention facilities for irregular migrants. In Spain, these centres were first established in 1985 across territory, coinciding with the country's accession to the EU, and continue to be the only instance under Spanish by which the deprivation of freedom of movement due to an administrative sanction is allowed (Solanes Corella 2016). In principle, detention is used to avoid absconding in the process of enforcing a deportation order, yet only a small part of those detained in CIEs end up being deported. Most people are set free after the maximum detention time of 60 days 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 (Martínez Escamilla 2016, 13). The UN Human Rights Committee raised concerns about the prevalence of these circumstances in Spain in a 2015 report denouncing "the persistent use of depriva-

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9   In February 2014, about 200 persons tried to cross the Spanish border at Ceuta by swimming around the breakwater. The 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).

tion of liberty to migrants in an irregular situation".[10] Complaints of mistreatment, torture, and failure to aid have been filed in all existing CIEs yet, sentencings are rare and often these cases are tainted by the deportation of victims and witnesses before they can testify in a trial and the routine erasure of videotaped evidence (Irídia 2017).

The lack of investigation and restoration of victims of border violence is consistent with the general pattern in addressing torture and mistreatment allegations that see torture complaints not duly investigated, acquitted, or pardoned and, later, even promoted and decorated (Bergalli, Rivera Beiras 2006), reinforcing the idea that extreme violence or even death are legitimate when used against alleged threats to the State's sovereignty. In a context where migration is criminalised, 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. This general lack of visibility and accountability of the practice 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 justice, restoration, and 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 services have to acknowledge that their 'blood relative' has done something… has committed a crime, really, […] so, it's difficult.[11]

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10 UN Human Rights Office (2015). "Concluding observations on the sixth periodic report of Spain". http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqX7R5nHBFqJOu4nx7MjbHJAiPJpixsP8%2Bk%2BsXvix ZUFiczygBcJ%2B9knj92Cy1WTuvIoN4F6vBJkQvaB%2BidSeWRBSH8MwA14T87JaN2JRGby.

11 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. Despite the reported prevalence of situations of abuse at the border, in detention and deportation, rates of reporting, even to human rights defenders and organisations is particularly low due to these barriers (Servicio Jesuita a Migrantes 2018). Migrants' lack of legal protection enables situations of abuse and defencelessness against the law, which in turn lead to fewer reporting and further impunity of perpetrators, as even when reported victims experience secondary victimisation or there is no follow-up on the cases:

> 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 these, so they continue reporting, how to set a precedent so they don't feel it goes unpunished.[12]

Furthermore, reporting becomes especially challenging in the case of migrants who have been previously victims of torture and police violence in their countries or origin. As this social worker from a migrant support organisation explained, they encounter many challenges including:

> [f]ear, 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.[13]

Likewise, human rights organisations have raised concerns about possible victims and witnesses of torture cases within detention institutions being deported before they could give testimony after having raised a complaint for having suffered torture (Calvó 2018). This adds to the lack of transparency and accountability in both cases of torture and the management of detention centres, leaving victims of torture with no access to justice, restoration, or support services.

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[12] AH/B/C/1/FN.

[13] AH/B/C/1/FN.

4 Asylum Seekers. Re-Victimisation, Torture, and Abandonment

From failure to protect torture victim's rights and structural violence to the physical aggression at borders, migrants are subject to different forms of violence by the migration control apparatus, of which torture, as we have seen in the previous section, is only the most visible and aberrant event of a continuum of violence. Any account of the practice of torture in modern Western democracies needs to diverge from approaches that regard torture as an isolated event but rather provide an in-depth analysis of the practices and discourses that make events of inhuman treatment and torture possible in the enforcement of migration control. In this section, we will contribute to this debate by presenting a case study of the double vulnerability of asylum seekers as unprotected victims of torture and potential victims of torture by the border control apparatus.

The asylum system assumes, by definition, that asylum seekers may have been victims of severe violations of human rights, including torture, for which, in Spain, the asylum system offers a specific set of measures to provide health support and social protection to asylum seekers. Whilst all asylum seekers have the possibility to access specific provisions for victims of torture and inhuman or degrading treatment, most of this protection is offered through the mediation of 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 drives 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 asylum system increases the vulnerability of victims of torture instead of protecting them (Jubany 2020). At the core of these are barriers to access 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.[14] 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. Cur-

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14 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.

rently, 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 Mascareñas 2019; Jubany, Rué 2020). 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)[15]

Despite the fact that under all legal frameworks and protocols victims of torture are recognised 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. (Social Worker, NGO)[16]

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 […] be-

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15   CR/B/C-SA/1/F0.
16   AH/B/TS/1/FN.

cause they have been living in the streets for six months before being assigned here. (Social Worker, NGO in Asylum Reception)[17]

Such deficiency in the identification of victims of torture is a common concern among organisations that provide legal, social and health care for victims. Irídia – 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 (Irídia 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)[18]

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 over asylum seekers stories and behaviour. In the context of asylum screening, cases of rape and torture are where "The fragility of a concept of credibility is most evident […], 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

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17   CE/B/TS/1/F1.
18   EX/B/P/1/FN.

other centre to go to. There are shelters, of course, but well, anyway, everything is precarious and temporary. (Psychologist, NGO)[19]

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 difficult 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. Still, the high number of negative final decisions in asylum cases[20] 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. (Social worker, NGO)[21]

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:

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19   EX/B/P/1/FN.

20   In 2018, 76% of the asylum claims that were evaluated were rejected (8,980 out of 11,875) (Oficina de Asilo y Refugio 2019).

21   FC/B/TS/1/FN.

> [T]he mental health public network, in general, is terrible. Referring this type of profiles [migrants] is complicated because there are no resources. (Social worker, NGO)[22]

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)[23]

The COVID-19 crisis brought a further layer of abandonment to these services as public authorities, shelters and charities closed down or faced increased demand and delays. In 2020, asylum procedures were stopped for months due to the strict lockdown enforced to curb the pandemic, but migrants continued to arrive at Spanish borders despite mobility restrictions. Violence against migrants and racial profiling by public authorities heightened as policing became stricter (Mamadou et al. 2020).

Despite the many shortcomings of the reception system and its consequences, not being able to access this social protection system, however, can have similar results, as ratios of homelessness and extreme poverty are particularly high for asylum seekers in Spain (Ribera Almandoz, Delclós, Garcés Mascareñas 2020; Iglesias, Rua, Ares 2020), situations which are particularly taxing for victims of torture or other trauma (Mazzetti 2008). The possibility of accessing mental health and other services for victims is even more reduced outside the reception system. As mentioned, most of these provisions are linked to accessing one of the official reception programmes or subject to referral from other institutions, such as social services. While there is a severe lack of research about the trajectories of asylum seekers who do not have access to reception programmes in Spain, recent investigations point out that for those without access, about 70% of the total, access to information and referrals to specif-

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[22]   BCN/SA/1/FN.

[23]   AH/B/TS/1/FN.

ic services for asylum seekers is restricted (Ribera Almandoz, Delclós, Garcés Mascareñas 2020).

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 governance of migration that are also at the core of practices of overt violence in the enforcement of policies of border control.

5 Conclusions. State Violence against Migrants in Contemporary Spain

The intention of migration policies in Western States is clearly that of prevention, rather than protection of migrants (Jubany 2020). In an effort to enforcing such prevention and deterrence of 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 seekers and migrants to potential torture and violence which, in different forms, permeates all bordering practices. 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 resulting from State 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. As the empirical evidence put forward in this chapter has shown, strong legal protection is not enough in a context of narratives that construe migrants as criminals and legitimise the violent enforcement of migration policies, on behalf of modern democracies.

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