

A follow-up study of allegations of ill-treatment/torture in incommunicado detainees in Spain

Failure of international preventive mechanisms

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Abstract

Background: Proper documentation is an important factor in torture prevention, thus making systematic research studies necessary. According to international reports, torture/ill-treatment continues to exist in Spain in relation to Basque people arrested under anti-terrorist legislation (incommunicado detention). To improve the safeguards of these detainees, the European Committee for the Prevention of Torture (CPT) has visited Spain and published recommendations. However, the Spanish Government has not implemented these recommendations. The primary aims of this study were to analyze the methods of torture claimed by Basque incommunicado detainees during 2000-2005 and to compare them with the findings of a previous study (1992-1993), as well as to evaluate the impact of the CPT recommendations. The influence of variables related to police ill-treatment were also studied.

Methods: This retrospective study is based on the testimonies given voluntarily by 112 Basques held incommunicado during 2000-2005. Testimonies were collected by a non-governmental organisation.

Findings: Threats (91%) and beatings (89%) were the most frequent alleged methods, followed by suffocation, deprivation methods, forced body position, undressing and physical exercises (percentage between 49% and 29%). The frequency of suffocation, electricity, visual input reduced and threats was lower in 2000-2005 than in the 1992-1993 period. Different patterns of torture related to each police force were detected. The group arrested by the Guardia Civil alleged more severe torture methods, while the detainees arrested by Ertzantza alleged less severe ill-treatment. The prevalence of sexual torture was higher for women than for men. The present data are in consonance with the findings described for international organisations after their visits to Spain.

Interpretation: These findings, in addition to other evidence, suggest that torture is still a serious problem in Spain in relation with Basque incommunicado detainees. This fact shows that national and international (mainly based on CPT visits) measures of control/prevention have failed. This study supports the importance of scientific statistical analysis in the documentation of human rights violations and its potential use in order to improve the forensic evaluation of torture victims.

Keywords: torture; ill-treatment; prevalence; prevention; forensic medicine

Introduction

Torture is one of the most severe forms of the violation of human rights. Proper documentation and assessment are considered

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to be important strategies in the prevention of torture.^{1,2} However, systematic data on national and regional variations in torture practices are scarce because epidemiological reports of cases of violations of human rights are, by their very nature, extremely difficult to carry out. Several studies have shown that the methods of torture may vary a great deal between countries and regions. However, systematic research studies are necessary in order to improve the assessment of torture.³

As in other regions with political conflicts, torture/ill-treatment continues to exist in Spanish police stations in relation to Basque people arrested under anti-terrorist legislation.⁴⁻¹² Such persons, to whom a highly specific legal framework is applied (incommunicado detention with suspension of some rights), constitute a very small minority of persons deprived of their liberty in Spain. In a previous study in the period 1992-1993 we analyzed the prevalence and methods of torture claimed in the Basque Country (Spain).⁵ Since 1990 much attention has been paid to the situation of persons deprived of their liberty in connection with terrorist offences by several international bodies. These organizations have assessed the situation in Spain and have issued recommendations to improve the safeguards of the Basque detainees under the anti-terrorist legislation.^{4,6-12} However, the Spanish Government has not implemented these recommendation.¹¹

The primary aims of this study were to analyze the methods of torture claimed by Basque detainees arrested under the Spanish anti-terrorist legislation during 2000-2005 and to compare them with the findings of the previous study of the period 1992-1993. Through this comparison we wanted to examine whether international visits to detention centres have been effective. As far as we are aware, no previous scientific analysis

has been done. The influence of variables which have been demonstrated to be factors of importance in police ill-treatment were also studied. In addition, the implications of these findings in forensic documentation are outlined.

Methods

This retrospective study was based on the testimonies given voluntarily by 112 persons who were arrested in the Basque Country (Spain) during the 2000-2005 period under the Spanish anti-terrorist legislation. This legislation allows incommunicado detention (solitary confinement) for a period of five days. The police forces taking part in the "anti-terrorist fight" in this period were "Guardia Civil" (GC; Spanish military corp), "Policía Nacional" (PN, Spanish civil police force) and Ertzantza (Basque civil police force).

The group against torture, Euskal Herria (known as "Torturaren Aurkako Taldea" [TAT]), has worked since 1992 as a non-governmental organization whose principal objective is the eradication of torture and other cruel, inhuman or degrading punishments.¹³ Testimonies were collected by trained members of TAT according to a previously described methodology.⁵ In brief, the interview was individual and open on the character of the torture claimed, avoiding leading questions. TAT members gave details to the ex-detainees about the objective of the interview and, if they accepted, signed or oral informed consent was obtained.¹³

The presented material represents all TAT collected testimonies from the period in question, in which there were also official forensic documents related to the detention.

The term "torture" is used in accordance with the definition of the World Medical Association (Declaration of Tokyo, 1975): "Torture is defined as the deliberate, system-

atic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason". The definition of the different methods of torture can be found in other previous publications.¹⁴⁻¹⁶

In order to monitor data, a simplified version of the protocol of the Rehabilitation and Research Center for Torture Victims (RCT/IRCT)¹⁷ was used. The following methods of physical torture were analyzed: beatings; forced abnormal positions (including standing for prolonged periods), forced gymnastic exercises, electricity, asphyxia methods (obstruction of airway "bolsa", drowning/near drowning "bañera"). These methods were the most frequently used in this region according to our previous report.⁵ Only the following methods of psychological torture/ill-treatment were included: detention in isolation cell and its duration (less or more than 96 hours [4 days]), visual input reduced as deprivation; threats as coercion techniques; and forced undressing as sexual torture, which is, in our opinion, representative of the overall psychological methods. Thus, in total, 10 methods of torture were analyzed.

The following demographic and criminological variables were also noted for this study: sex, age, police force which realized the arrest and legal status after the arrest.

The results are expressed as means (standard deviation) of individual values or as percentages. The χ^2 test with and without Yates' correction, and Fisher's exact test were used in the statistical study in order to evaluate the association between period of time, sex, police force and legal situation after arrest. They were also employed to compare the frequency of the different methods of torture in relation to demographic and

criminological variables. In this analysis, the age variable was coded into three groups: 18-23 years, 24-30 years and over 30. The quantitative variables (age and total number of torture methods alleged by each subject) were compared using Student's t test or Univariate Analysis of Variance. All analyses were carried out using the SPSS (Statistical Package for Social Sciences) program. The level of significance was chosen as $p < 0.05$. Only the methods with a frequency higher than 10% were considered in the statistical analysis.

Results

Findings of the 2000-2005 period

The sample of the 2000-2005 period was made up of 112 incomunicado detainees. The demographic and criminological characteristics are shown in Table 1: there was a high frequency of males (76%) and a relatively low average age (27 years; SD 7 years). The police force most commonly involved in the arrest was the GC and after detention the majority of the detainees were in prison.

The number and frequency of the different types of ill-treatment are shown in Table 2. On the basis of allegations made by detainees, the pattern of ill-treatment was a combination of physical and coercion methods, associated frequently with deprivation and sexual ill-treatment. In relation to beatings, 10 detainees of the GC alleged the method named "sandwich" (the detainee is wrapped with a blanket before being beaten in order to avoid or minimize the physical marks of the beating). Detention time in incomunicado regimen had an average of 4.1 days, being longer than four days (96 hours) for 42% of the detainees (Table 2).

Comparison between 2000-2005 and 1992-1993 periods

The comparison between the two periods

Table 1. Demographic and legal variables of the two periods

	2000-2005 period (N = 112) n (%)	1992-1993 period (N = 87) n (%)	Statistical value
Sex			n.s.
Male	85 (76)	70 (80)	
Female	27 (24)	17 (19)	
Age (years)			
18-23	37 (34)	27 (42)	
24-30	49 (45)	20 (31)	
> 30	23 (21)	17 (27)	
Not indicated	3	23	
Media (DS)	27.2 (6.9)	27.4 (8.4)	n.s.
Police force			p < 0.001
Guardia Civil	60 (54)	64 (74)	
Policia Nacional	35 (31)	23 (26)	
Ertzantza	17 (15)	0	
Legal situation after detention			p < 0.001
Freedom	22 (20)	44 (51)	
Imprisonment	86 (80)	42 (49)	

N represents the absolute number of persons in each period of time. The percentage in each group is calculated as percentage ($n \times 100 / N$) of the total number of subjects of each period of time. Missing values were not included in the percentage analysis. The statistical difference between groups was calculated using χ^2 test and Student's t test. n.s. = not significant.

in relation to demographic and criminological variables showed statistically significant differences in relation to which police force undertook the arrest and the legal situation after detention (Table 1). Regarding the methods of torture, statistically significant differences between the two periods were obtained for the following methods: suffocation with plastic bag, electricity, visual input reduced and threats (Table 2). All of them had a higher frequency during the first period of time, the difference being especially high in electric torture.

Variables related to the methods of torture in the two periods of time

In a preliminary analysis the possible interrelations between the demographic and criminological variables were evaluated.

With regard to significant statistical differences between police forces, the average age of detainees by GC (29; DS 8.3 years) was significantly higher than with the PN (25 years; DS 5.3) and Ertzantza (24 years; DS 4.7 years old) ($p = 0.001$). There were no other significant differences between these variables.

The different methods of torture were compared in relation to the demographic and criminological variables. This study showed that the police force was the most decisive variable (including period of time variable) in practically all methods of ill-treatment. In fact, except for the method of awkward body position (no significant differences), and for threats ($p < 0.01$), all the other types of torture showed statistical significance differences with p value < 0.001.

Table 2. *Methods of alleged torture**

	2000-2005 period (N = 112) n (%)	1992-1993 period (N = 87) n (%)	Statistical value
<i>Physical torture</i>			
Beating	100 (89)	83 (95)	n.s.
Suffocation with plastic bag, "la bolsa"	55 (49)	55 (63)	p < 0.05
Keeping an awkward body position for an extended period of time	46 (41)	42 (48)	n.s.
Forced physical exercise	32 (29)	30 (34)	n.s.
Electricity	6 (5)	26 (30)	p < 0.001
Suffocation with water "la bañera"			
<i>Deprivation torture</i>			
Isolation cell longer than four days (96 hours) ¹	47 (42)	33 (38)	n.s.
Visual input reduced ("capucha")	48 (43)	55 (63)	p < 0.01
<i>Coercion ill-treatment</i>			
Threats	102 (91)	86 (99)	p < 0.05
<i>Sexual torture</i>			
Forced undressing	36 (32)	32 (37)	n.s.

Data are expressed as percentage (%) of total number of subjects of each period of time. The methods of torture were examined using a simplified version of the RCT/IRCT protocol. The statistical difference between groups was calculated using χ^2 test. n.s. = not significant.

The existence of a harder physical and psychological ill-treatment on the group arrested by GC was demonstrated by a higher frequency in the use of the majority of methods (Figure 1). Electricity was exclusive in the GC group; and suffocation with

a plastic bag, visual input reduced, forced undressing and incommunicado duration longer than 4 days was nearly exclusive to this police force. The pattern of ill-treatment of the Ertzantza group was the least. Some methods (suffocation with plastic bag,

*) The protocol of the Rehabilitation and Research Center for Torture Victims (RCT/IRCT)¹⁷ includes "isolation" as a form of torture. Moreover, one of the recommendations on the Report of the Special Rapporteur on the question of torture in the visit to Spain¹² was that "Since incommunicado detention creates conditions that facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture, the incommunicado regime should be abrogated". On the other hand the duration of the incommunicado detention has been evaluated in the CPT reports. In the Report on the visit to Spain in 1991¹⁶ is said that: "It is

highly undesirable for a detainee to have contact practically exclusively with law enforcement officials⁵ for a period of up to five days, especially when the period in question is that during which the risk of ill-treatment is the greatest. The CPT recommends the Spanish authorities to reduce the length of time during which a person in the custody of the police or the Civil Guard can be held incommunicado". In the light of all these findings, we decided to include the duration of the incommunication longer than four days (96 hours) as a method of psychological ill-treatment.

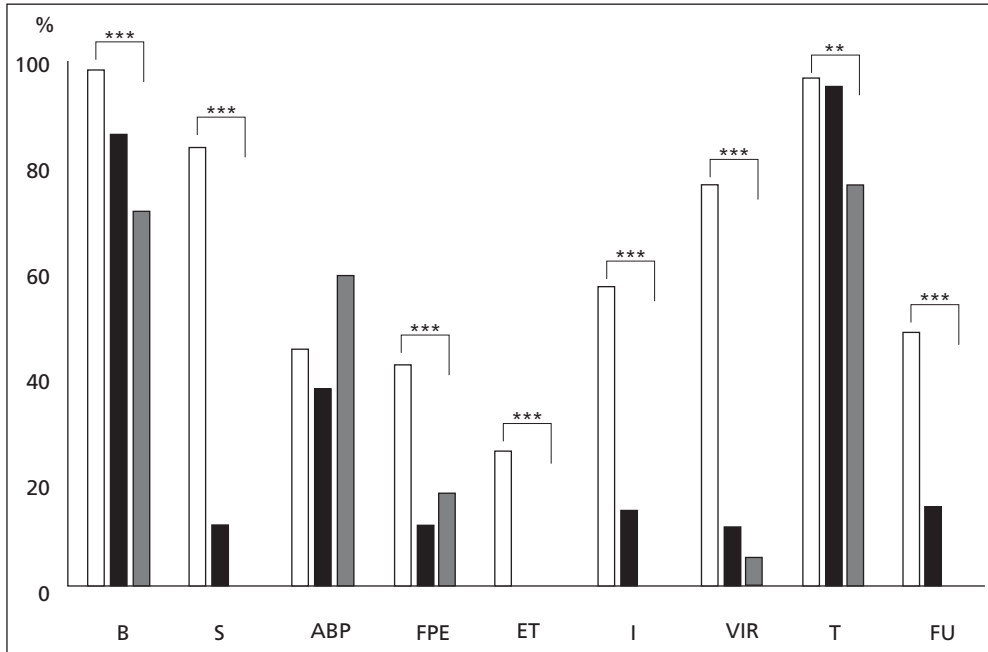


Figure 1. Methods of torture in relation to the police force.

Representation of the percentage rates in types of torture alleged by detainees arrested by the GC (white columns; $N = 124$); the PN (black columns; $N = 58$); and Ertzantza (hatched columns; $N = 17$). B beating; S suffocation with plastic bag; ABP awkward body position for an extended period of time; FPE forced physical exercise; ET electric torture; I isolation cell longer than four days; VIR visual input reduced; T threats; FU forced undressing.

***) $p < 0.001$

**) $p < 0.01$

electricity, forced undressing and incommunicado duration longer than 4 days) were never alleged by the detainees of Ertzantza group.

The analysis of the distribution of methods of torture in relation to age showed significant statistical differences for incommunicado duration longer than 4 days (18-23 years old = 25%; 24-30 years old = 35%; and more than 30 years = 65%; $p < 0.001$); forced undressing (17%, 30% and 47%, respectively; $p < 0.001$); asphyxia by bag (41%, 55%, 72%, respectively; $p < 0.01$); and visual input reduced (37%, 48% and 67%, respectively; $p < 0.05$).

The sex variable was only associated with forced undressing (male = 27%; female 59%; $p < 0.001$). Statistically significant differences were also obtained between legal situation after detention and incommunicado duration longer than 4 days (freedom = 26%; prison = 49%; $p < 0.01$); and visual input reduced (67 and 44%, respectively; $p < 0.01$).

With a view to examining if the differences observed in the variables period of time, age group, sex and situation legal after the detention were due to an association between these variables and the police force variable, we carried out a subsequent strati-

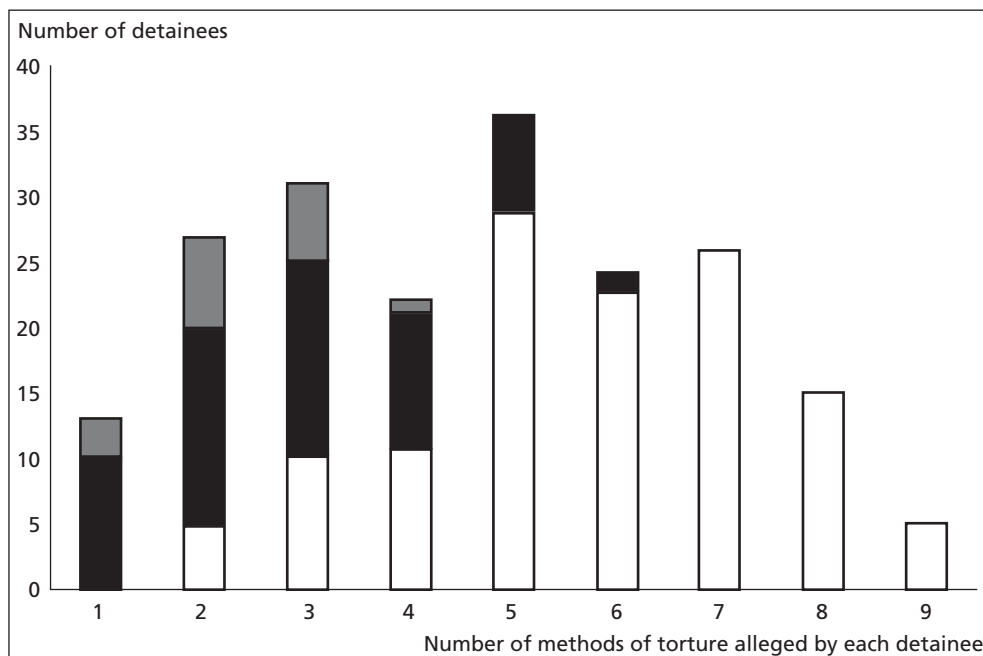


Figure 2. Number of methods of torture alleged by each detainee in relation to the police force in the two periods of time.

Representation of the number of the methods of torture alleged by each detainee. White portions of the columns correspond to the detainees arrested by the GC (N = 124); black portions of the columns correspond to the detainees arrested by the PN (N = 58); and hatched portions of the columns correspond to the detainees arrested by the Ertzantza (N = 17). In the present article we codified ten methods of torture using a simplified version of the RCT/IRCT protocol.

fication analysis controlling the police force variable.

In the GC group the most important findings were: the decrease in the use of electricity (41% vs 10%; $p < 0.001$) and awkward body position (56% vs 33%; $p < 0.05$) from the first to the second period; the increase in the percentage of detainees arrested without communication for more than four days from the first to the second period (68% vs 47%; $p < 0.05$); the higher frequency of forced undressing between woman than between men (73 vs 38%; $p < 0.001$); the higher percentage of detainees arrested without communication for more

than 4 days between the detainees who were to prison (69% vs 40%; $p < 0.01$); and the higher percentage of visual input reduced between the persons who were freed after the arrest (93% vs. 68%; $p < 0.01$).

Number of torture methods alleged by each detainee in the two periods of time
The 199 detainees alleged a total of 919 methods of torture (average of 4.62 [SD = 2.14]). The number of torture methods alleged by each detainee is shown in Figure 2. The main variable associated with the number of methods per person was the police force. This figure was noticeably higher

among the GC group than among the PN group and Ertzantza group (5.75, SD 1.72; 2.86, SD 1.33; 2.29, SD 0.84, respectively). It is worth noting that subjects of the GC group represented 99% (69/70) of detainees who alleged more than five different methods. Significant differences were not encountered on the basis of sex, age group, period of time or legal situation after the arrest.

Discussion

There is a solid body of evidence, including the present study, to assure that the torture and ill-treatment continue to be a serious problem in Basques detained under the anti-terrorist legislation in Spain.⁴⁻¹³ This is especially relevant as Spain is a democratic European country that has signed and ratified the international instruments against the torture. The comparison between the two periods of time shows little improvements in the last 15 years, even though CPT and the United Nations Special Rapporteur on the question of torture have visited Spain on several occasions, giving clear recommendations to improve human rights. The overwhelming number of allegations must be seen as a problem itself, indicating that the internal and international measures of control of torture have failed.

According to TAT, 793 persons from the Basque Country were held under the anti-terrorist legislation in 2000–2005; 486 (61%) alleged ill-treatment and 364 of them were collected in TAT annual reports.¹⁸⁻²² So, our sample (112/364) represents 31% of them. This percentage was quite similar in 1992-1993 period (87/216; 40%). Our material was large, thereby researching at least a significant part of the people from the Basque Country arrested under the anti-terrorist legislation in the study period. The documents analyzed in the two periods of

this study were collected by the same human rights organization and in the same manner. We therefore assume that the two samples are comparable. The difficulties inherent in epidemiological studies tend to be particularly pronounced in research concerning human rights violations;²³ in our sample a selection bias cannot be excluded.

According to the above data of the TAT, about 88 Basque persons detained under anti-terrorist legislation alleged ill-treatment/torture each year. Taking into account that the population of the Basque Country is near 2,700,000 habitants, the incidence of ill-treatment/torture would be about 3 cases/100,000 habitants/year. Given that 66% of our sample was young people aged 20 to 29 years; the estimated incidence of alleged torture in such age would be 14 cases/100,000 habitants/year (59 cases each year/415,999 habitants). This figure seems quite lower than these found in other studies in populations affected by war, conflict, and violence, such as Ethiopia, Gaza, Cambodia or Algeria,²⁴ although the methodological differences do not permit a reliable comparison. However, the data about Spain has to be considered as worrying. In consonance with other populations of torture victims the demographic characteristics of the present sample show a clear dominance of young adult males.^{3,24,25}

Type of ill-treatment and related variables

Our findings are in consonance with other articles, showing that torture exposure is highly complex and that a large number of physical and psychological methods are simultaneously or successively used on the same person.

Some of the main findings were the identification of specific patterns of torture per police force and the differences in the types of torture in relation to the periods of time.

The GC group was the most severely damaged. Some of the torture methods were exclusive to the GC; while others were almost exclusive. On the contrary, the detainees of the Ertzantza group alleged a pattern of less severe ill-treatment, and some methods were never alleged by them.

Another factor related with the methods of torture was the *period of time*. With the data available in the medical literature we were able to compare three periods of time in relation to Basque detainees in Spain: 1973–1978;¹⁴ 1992–1993⁵ and 2000–2005. From the first to the second period it could be observed that some methods alleged in the 1970s, such as alanga, finger torture or suspension from “barra” had fallen out of use; the frequency of other methods such as “wet submarine” (“bañera”) had gone down. However, suffocation by “bolsa”, forced gymnastics and sexual verbal assault were more often used in the 1992–1993.⁵ The comparison between 1992–1993 and 2000–2005 shows less changes, principally the diminution of the use of the electricity by the GC. As a consequence, it can be concluded that the practice of torture has changed in order to leave minimal visible marks.

The methods of torture vary over countries and regions. It has been suggested that the evaluation of self-reported torture can be facilitated by this fact.³ Some types of physical torture seem to be universal, principally blunt force. On the contrary, other methods of torture are quite specific for a region. In some places sharp weapons, whippings or burns with cigarettes have been used with a frequency of about 50%.^{3,25} In other places, as observed in this study, methods which do not leave external injuries are more frequently alleged.

The prevalence of sexual torture in our sample of the period 1992–1993 was high,⁵

though it was similar to the prevalence reported in other studies.^{26,27} The results of the period 2000–2005 show again a preference of sexual torture on women, as has been reported in previous articles.^{26,28}

Comparison with other sources of information about torture in Basque Country

During the period of time involved in this study, the CPT and the United Nations Special Rapporteur on the question of torture have visited Spain on several occasions, and in some of the visits they interviewed Basque persons arrested under anti-terrorist legislation.^{6–12} Descriptive findings of six reports (April 1991, April 1994, June 1994, January 1997, July 2001, and October 2003) are in consonance with our results about methods of torture on the whole (the most frequent methods being described as beatings, asphyxiation by the placing of a plastic bag over the head and threats; followed by electric shocks, standing for prolonged periods, physical exercises, hooding and forced nudity), and also in relation to some findings with regard to police force and changes over the time.

With regard to internal reliability of individual testimonies, these two international organisms have concluded that there is ample evidence, including of a medical nature, consistent with allegations of ill-treatment and that the allegations of torture and ill-treatment could not be considered to be fabrications in light of the internal consistency and the precision of factual details.

In agreement with the CPT, we are aware that persons arrested under anti-terrorist legislation may make false allegations of ill-treatment with a view, inter alia, to undermining the reputation of the law enforcement agencies. However, we think that the validity and reliability of the allegations is supported by different variables:

- a) Data about internal consistency of the individual allegations
- b) Data about consistency amongst the information gathered by different sources
- c) The significant statistical differences observed in relation to the different variables in the analysis of torture.

Forensic and scientific implications

The role of the forensic doctors can be of great importance in documentation and prevention of torture. However, in some countries, including Spain, the quality of the work of the medical doctors employed by the state has been questioned.²⁹⁻³² Several reasons, for example lack of a proper formation and lack of a formal protocol, could explain the low quality of the work. In 1997, the Spanish Government published a standardised form for the recording of findings of forensic doctors. However, the form did not include allegations of ill-treatment and the doctor's conclusions.³³ Moreover, this insufficient format¹¹ has been used only in a few cases.

In this context, it has been proposed that the medico-legal examination of survivors of torture should ideally be done by a doctor with knowledge of the prison conditions and torture methods in use in the particular region and their common after-effects.³⁴ Today, the Istanbul Protocol is one of the most important tools in the investigation and effective documentation of torture, and it would be recommended that the Spanish Government put it into practice. Protocol trainings, as has been done in other countries, should also be organized in Spain.³⁵

The findings of the present study should be interesting for Spanish forensic doctors, in relation to a proper evaluation of individual cases of allegations of torture – and for Spanish Government, in relation to designing a uniform protocol in the examination of

detainees in consonance with the principles of the Istanbul Protocol.

In addition, our findings also indicate the importance of statistical analysis in the study of human rights violations.

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