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PhD Thesis Maite Daniela Blanco Lo Coco

The externalisation of the EU's migration policies and the contradiction between the protection and negation of life: exception, deportatation and racism at the Spanish-Moroccan border

La externalización de las políticas migratorias de la Unión europea y la contradicción entre la protección y la negación de la vida: excepción, deportación y racismo en la frontera hispano marroquí

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PhD Programme "Human Rights: Ethical, Social and Political Challenges"

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Foreword

This dissertation is written as a collection of research papers, which has some implications for the reader.

Firstly, the chapters do not progressively build on each other, leading towards a unifying conclusion which summarises and reflects upon their findings. However, there are, clear and fruitful connections between the empirical cases, the theories invoked and the methodologies used in the chapters. Since each of the chapters is a complete study, I elaborate on these connections in the introduction and reflect further upon the findings of the chapters at the end of the introduction.

Secondly, several of the chapters have different writing styles and have been produced both in Spanish and English. Therefore, they have different footnote criteria and referencing systems. This is because the chapters have been published in three different journals, each with their own requirements concerning style guidelines, notes and references.

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L'Europe est indéfendable.
Aimé Césaire, 1955

Introduction

Human rights' protection is the cornerstone of the European Union's (EU) identity and one of the main goals of its external action. The EU has progressively extended the promotion of human rights within Europe and in third countries since the beginning of the integration process. In 2009, the Treaty of Lisbon (EU, 2007) strengthened the EU's commitment to the protection of human rights by placing it at the centre of its external action (Gómez Isa, Churruca Muguruza and Wouters, 2018, Churruca, 2019). Later, in 2011, the EU Council (CoEU) adopted a strategic framework on human rights and democracy that structured the EU's external action on human rights and applied to all of its policies. Today, human rights provide the scaffolding for the EU's external action.

Migration issues have been included into the EU's external action as part of a process that has been called 'externalisation' (Commission of the European Communities, 2002). Externalisation refers to the export of policies on border control beyond countries' individual frontiers, mainly by reinforcing partnerships with third countries. Framed by human rights, the EU's externalisation efforts aim to prevent unwanted population from arriving in Europe (Cassarino 2010; Lavenex, 2006; Lavenex and Wichmann 2009, Lavenex 2015; Lemberg-Pedersen, 2012; Moreno-lax and Lemberg-Pedersen, 2019). Control and protection measures are therefore simultaneously used as migration control mechanisms in third countries (Moreno-Lax and Lemberg-Pedersen, 2019). These features have turned migrants into both threats and the subjects of protection, who must be simultaneously controlled and (theoretically) protected, something which is a biopolitical contradiction (Foucault, 2000; Agamben, 2016, 2019; Esposito, 2005, 2008).

This biopolitical contradiction is a fundamental feature of the externalisation of EU migration policies (Garcés-Mascareñas and Lopez-Sala, 2021; Vaughan-Williams, 2017). Under the guise of protection, EU migration policies are causing human rights abuses and migrants to die, and so result in killing the very people that they claim to protect. This contradiction has been exported to third countries in the form of control (manifested in detention, and deportation) and have influenced them to develop national frameworks for the protection of migrants and refugees. This dual logic involving both protection and control has had an impact on the evolution of migration policies in the EU's neighbouring countries, on the southern Mediterranean and mainly on the Maghreb region (Garcés-Mascareñas and López-Sala, 2021; Lo Coco and González-Hidalgo, 2021). This means that the EU has developed national protection programmes for migrants and refugees while at the same time controlling, detaining and deporting them, which has led third countries to following suit.

Despite the proliferation of migrant protection frameworks, detention and deportation, deaths, shipwrecks, non-assistance and physical aggressions by authorities are daily occurrences on the EU's borders, with an air of impunity and exception. In this scenario, violence has become generalised within the EU's response to migration at borders. International organisms,¹ several NGO's reports, migrants and activists have documented the increasing number of violations of migrants' human rights,² violence and deaths at EU borders (Council of Europe, 2021; Lo Coco, 2021). It therefore seems that, while human rights have become widespread in the EU's discourse, legislation and policy documents, borders have become more violent, resulting in regular violations of human rights and causing the deaths of migrants at borders (El Enany, 2019; De Genova, 2018; Gazzotti 2020; Iridia, 2023).

Moreover, violence at the EU's borders affects non-white populations. This is because violence and mobility restrictions mainly target racialised groups and postcolonial subjects. In fact, people who are deported, detained or even die while attempting to cross the EU's borders are racialised groups who originate from former colonies. These racialised populations are excessively exposed to harm, violence, detention and deportation, and death through migration control during their journey to and arrival in the EU (El-Enany, 2020; De Genova 2018; Kalir, 2019; Mablyn and Turner, 2021, Lo Coco, 2023). Pointing at racism, postcolonial studies have identified connections between the EU's migration policies and a colonial history of domination as being embryonic elements of EU migration policies (De Genova, 2018, p. 1769; El-Enany, 2020, p. 10; Grosfoguel, 2012; Grosfoguel, Oso and Christou, 2015; Lemberg-Pedersen, 2022; Mayblin, Wake & Kazemi, 2020; Rajaram, 2018). Biopolitics and the colonial history of domination are therefore important elements to consider when looking at human rights violations at EU borders.

The situation at the Spanish-Moroccan border is an example of how the violation of racialised migrants' human rights occur in parallel to the existence of EU protection frameworks. Within the dual logic of protection and control, Morocco has over time developed measures that have resulted

¹ See, for example, 'UNHCR warns of increasing violence and human rights violations at European borders', 21 February 2022: <https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations>

² See, for example, Human Rights Watch on Refugees and Migrants: <https://www.hrw.org/tag/europe-refugees-migrants-rights>

in illegal detention and deportation practices, exposing black migrants to violence, exception and death (Gadem, 2019; Lo Coco & González-Hidalgo, 2021). Spain has engaged in similar practices, including the recent illegal deportation of 55 unaccompanied children to Morocco (Público, 2022), among others. The Spanish *Guardia Civil* shot rubber bullets at helpless black migrants who were trying to cross the border in El Tarajal, Ceuta (Spanish enclave in North Africa) in 2014, and the perpetrators of fifteen deaths have not been brought to justice.³ More recently, on 24 June 2022, when approximately 2000 black migrants approached the militarised fences of Melilla (Spanish enclave in North Africa) from the Moroccan side of the border, many people were injured or killed. To date, 37 people have been confirmed dead as a consequence of the coordinated (in)action of the authorities of both countries.⁴ Neither Spain nor Morocco have investigated these events.⁵

This thesis explores the relationship between a generalised framework for protection of human rights and how racialised migrants have been placed in a state of exception at EU borders within the context of the EU's externalisation of migration control. Special emphasis is made on detention, deportation and exception at the Spanish Moroccan border.

Specifically, the main question driving this research is:

- (1) How can the contradiction between the existence of an extensive framework of migrant protection and the simultaneous violation of human rights, detention, deportation, exception and deaths of racialised migrants at EU borders be explained?

Three specific questions help to address the main research question. Each of them has been answered in a specific article.

- (1.1) How can the relationship between the generalised use of human rights' protection in the external dimension of the EU's migration policy and the violations of migrants' human rights and production of deaths at EU borders be explained?
- (1.2) To what extent does the EU's externalisation of migration control reproduce the contradiction between human rights protection and control of migrants in third countries?
- (1.3) What are the connections between colonial history, racism, exception and violence when it comes to border control?

The first specific question (1.1) was addressed in 'EU migration policy and migrant human rights: the protection and negation of life at EU borders' (Lo Coco, 2021). This publication tackled the contradiction between the generalised use of human rights' protection within EU migration policy and the production of deaths at borders. Through an analysis of the EU's migration policy, this article

³ For more information on the evens of El Tarajal (2014), see CEAR 'Caso Tarajal: 15 muertes y 9 años de Impunidad': <https://www.cear.es/caso-tarajal/>

⁴ For further information on 24 June 2022, see Amnesty International 'Spain and Morocco: Demand justice for dead and missing at Melilla': <https://www.amnesty.org/en/petition/justice-for-dead-and-missing-at-melilla/>

⁵ In this regard, the latest observations made by the UN Committee Against Torture about Spain on 24 August 2023 are enlightening and claim the need for legal investigation: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FESP%2FCO%2F7&Lang=en

suggested using Esposito's concept of *immunitas* to bridge inherent contradictions. Protection of life and the production of death through control are constitutive mechanisms of Western modern politics. This argument implies that human rights and the protection of life metaphorically legitimise the EU's control of migration from third countries, while blurring the underpinning logics of government, coloniality and racism. The article concluded that the protection and negation of (certain) lives are intrinsic to the EU's migration policy.

The second specific question (1.2) was addressed in 'The dual logic of European externalisation: protection and deportation in Morocco' (Lo Coco and Góñez-Hidalgo, 2021). This article examines the case of Morocco and, specifically, the practices of arbitrary detention in informal centres, forced displacement and deportation of black migrants between 2019 and 2021, based on both primary and secondary sources. It concluded that the European Union's externalisation policies for border control have driven the development of frameworks to protect the rights of migrants, refugees and asylum seekers in third countries, simultaneously with control policies, unlawful detention practices and deportation of racialised migrants.

The third specific question (1.3) was addressed in 'Coloniality and racism in the Spanish deportation system: exceptional practices and violence during deportation to Morocco' (Lo Coco, 2023). This article contributes to the postcolonial understanding of the Spanish deportation system by focusing on its connections with racism, exception and violence. It did so by relying on Fanon's anti-colonial ideas, together with Mbembe's biopolitical developments and the concept of coloniality. It analysed the deportation system as implemented in Spain and showed that it is within a legal context that results in a state of exception for and the production of death of racialised migrants. The case of Morocco and six direct testimonies of deported nationals were studied. The analysis led to the conclusion that the deportation system as implemented in Spain is intertwined with coloniality, exception and violence, and often produces the death of racialised groups.

A conceptual and theoretical framework was developed in order to analyse the research question. However, before outlining the framework, the relevance of this research will be discussed in the following section.

1. Relevance of the research

This research is strongly committed to the defence of human rights and goes beyond academic objectives. It emerged from a political conviction about the need to denounce the violation of human rights at EU borders, impunity in the migrant state of exception and violence against racialised migrants (Cruz Ayuso et al. 2020, p. 74-76).

This dissertation is important firstly, because it provides evidence of the inherent racism, violent practices and human rights abuses at the EU's borders. It is essential to identify the violations of human rights and the logics of the state of exception and impunity in being able to transform this reality. Secondly, because it contributes to bridging existing literature gaps in the study of migration and borders.

The first article of this dissertation, ‘EU migration policy and migrant human rights: the protection and negation of life at EU borders’ (Lo Coco, 2021), provides evidence of the need to include racism and colonial history in the analysis of violence, death and protection at EU borders. This article led the way for the entire research process, as it identified some gaps in the literature and raised questions on the relationship between race and colonial history, on the one hand, and death at borders, on the other. Based on a biopolitical analysis, racism appears to be the feature that separates those who are protected from those who are left to die, while the framework of protection serves to blur racism.

It uses a biopolitical perspective to reflect on the externalisation of EU migration policies, placing at the centre of the reflection the contradictory relationship between the protective and repressive measures that are part of the EU’s single logic. The article illustrates the radical potential of biopolitical approaches for understanding the inherent contradiction of modern politics by providing a theoretical structure to this dissertation. It concludes that further post-colonial and empirical research is needed in order to analyse the role that coloniality, gender and race play in the production of death at borders.

While measures of protection and control have been simultaneously externalised towards third countries, there is little empirical academic research on exceptional practices of detention and deportation in third countries in the context of the EU’s externalisation process. Often disregarded, the dual logic of EU externalisation in third countries is present in the case of Morocco, where migrants face violence, detention and deportation despite the existing framework of protection for asylum seekers and refugees.

This situation is addressed in the second article entitled ‘The dual logic of European externalisation: protection and deportation in Morocco’ (Lo Coco and González-Hidalgo, 2021), which contributes to the bridge the existing gaps in the literature on the EU’s externalisation practices. It examines how protection frameworks have been established in parallel with the development of detention and deportation systems as measures of migration control in third countries. It takes Morocco as the basis for a case study and provides primary data on detention, illegal detention centres, deportation and the forced displacement of black migrants in Morocco.

There are even more significant literature gaps regarding the application of a postcolonial approach to the study of migration control practices. Little research has been done for connecting concepts such as the colonial history of domination and racism when analysing European migration policies and externalisation. As this kind of analysis is still incipient in the study of borders, little consideration has been given to race and colonial history to date. Despite this perspective having progressively gained importance within migration studies, the relationship between racism and the migrant state of exception is still under-researched and especially limited when it comes to the empirical research of practices at EU borders.

Detention and deportation in Spain have been studied from different angles and perspectives, focusing on detention, legal operators, police practices and the junction between prison and deportability (Barbero, 2014, 2018; González Beilfus et al., 2018; Brandariz & Fernández-Bessa, 2017;

García-España, 2017, 2018; López-Sala & Godenau, 2017; Martínez-Escamilla, 2017; Moffette, 2018; Orgaz Alonso, 2018). However, studies have often disregarded racism and colonial legacies, and consequently, race-blind analyses have often been produced (De Noronha, 2019; Kalir, 2019; Lemberg-Pedersen, 2020). In addition, the experiences and discourses of deportees have been under-researched because testimonies are very difficult to obtain, due to the stigma attached to deportation in Morocco (Lo Coco, 2023).

The relationship between exception, coloniality and racism with deportation at the Spanish-Moroccan border is approached from a biopolitical perspective in the third article, 'Coloniality and racism in the Spanish deportation system: exceptional practices and violence during deportation to Morocco'. This research analyses the testimonies of six Moroccan migrants who reported their experiences.

The following section illustrates the conceptual and theoretical framework that underlies this dissertation. A series of key concepts are first introduced and discussed, followed by an explanation of the theoretical framework itself.

2. Conceptual and theoretical framework

This research was carried out from the perspective of the political sciences, relying on a multidisciplinary and inter-disciplinary approach which combines different bodies of literature. The following paragraphs will define the key cross-cutting concepts used in this dissertation, followed by the main conceptual framework underpinning this dissertation. Specifically, the biopolitical approaches to migration and borders, the protection-control logic at EU borders and postcolonial approaches to migration will be introduced and discussed.

- *The concepts of borders, externalisation, deportation, protection, violence, and exception*

The understanding of **borders** is central for this dissertation, mainly because it is the focus of the analysis, specifically, the border between Spain and Morocco. There is extensive academic literature on the concept of 'border'; borders have been studied from different disciplines and perspectives that have evolved from the late 1980s and early 1990s. The analysis evolved from interpreting borders as territorial fixed lines that divide sovereignties, to the idea of b/ordering as socio-cultural and discursive processes and practices, and from political sciences and political geography to an interdisciplinary field of study. This is a vital transition, as it encompasses critical reflections on the concept of borders which help overcome the idea of the border as a mere dividing line between countries.

These reflections tend to describe different forms of multiple borders which are manifested into various functions and practices (Brambilla, 2015). These considerations expand how border enlarging geographies, practices and legal provisions are imagined, while making visible the different aspects that are involved in making borders real in a different way depending on who you are (Passi et al., 2019).

After this shift from border to bordering practices, Critical Border Studies (CBS) were formalised as a distinctive approach in 2012 as a response to the growing multiform complexity of contemporary bordering practices which, in addition to being cognitive, separate ‘us’ from the ‘others’ (Parker & Vaughan-Williams, 2012). According to Parker and Vaughan-Williams (2012), borders are a heterogeneous assemblage of thought. This involves a rethinking of the nature and the location of borders as posed in the question: Where are borders located? And most importantly, for whom are they placed? This theoretical development problematises the notion of ‘border’ by turning it into a locus of investigation, re-conceptualising it as a set of performances in multiple lived spaces where the border is not the same for everyone (Shamir, 2005).

The concept of ‘borderscape’, suggested by Brambilla (2015), has a vast critical potential to understand the modern dynamics occurring at borders (Perera, 2007), because it underlines not only the visible part of borders but the complex web that it is not immediately visible. This notion points to a de-territorialised and dispersed mobile and relational space that secures regimes and sets of practices, a concept able to grasp the variations in space and time (Prem Kumar Rajaram and Carl Grundy-Warr, 2007). Based on this conceptual understanding, dynamics, practices and other geographies, such as detention, deportation and protection in third countries, can be included in the analysis and considered to be part of the same mechanisms.

Critical views on borders contribute to the questioning of categories about migration today, such as the concept of transit migration that appears to be at least polemic and contentious (Collyer, Düvell and Haas, 2012). Collyer, Düvell and de Haas have argued that, after the 1990s, the geopolitical context changed and so did migration geographies. The focus was no longer on the displacement from East to the West in the context of the Cold War, but from South to North. While similar movements of people can be observed between different countries all over the world, only those in the vicinity of Europe are labelled as being ‘in transit’. This is important when talking about ‘transit’ migration and ‘transit countries’. It is essential to understand ‘transit’ as a problematic category used to justify externalisation and control measures. Morocco has been considered a country of transit by various scholars, international organisations and other humanitarian actors; however, CBS provides a more critical interpretation of displacement, mobility and borders that is different from the dominant views.

Within this dissertation, borders are interpreted from a CBS perspective as areas of political confrontation between North and South, control and resistance. ‘Borders’ are regarded as ubiquitous, multiple and dynamic entities. The Spanish-Moroccan border, therefore, does not only refer to the dividing line between these two countries, but to the complex fabric that aims to control migration in both countries, including migration policies, detention and deportation in Spain and Morocco within the framework of EU legislation, and border practices. Understanding borders as ubiquitous helps to explain the complex dynamics, practices, forms and functions that characterise frontiers in a globalised world. In addition, the concept of ‘borderscape’ helps to question the policies, politics and legislation that shape and legitimise the contemporary regime, while considering strategies of resistance. Interpreting borders as involving complex interactions between old boundaries, practices, discourses and relationships also reveals the asymmetric power which relies for its existence on coloniality.

The academic literature has analysed the processes of **externalisation** as a major trend in the evolution of migration policies (Zaiotti, 2016). Different conceptualisations have been produced depending on the aspects emphasised in connection with this term. Some of them have referred to ‘non-entrée’ logics (Hathaway, 1992; Gammeltoft-Hansen and Hathaway, 2015). Others have developed the idea of ‘extraterritorial control’ as the separation of the control of migration from the State border (Gammeltoft-Hansen and Tan 2021), which are often related to ‘outsourcing’ processes or ‘offshoring’ (Bialasiewicz, 2012; Casas, Cobarrubias and Pickles, 2012), as well as ‘remote control’ (Balzaq, 2009; Zolberg, 2003). In particular, Gammeltoft-Hansen (2021, p. 297) studied the externalisation process in EU migration policies carried out inside third countries and by third-country authorities. They showed that third countries granting asylum may sometimes adopt similar deterrence policies (Gammeltoft-Hansen and Tan, 2021) such as detention and protection-deportation measures (Lo Coco and González-Hidalgo, 2021).

Other terms such as ‘policing at distance’, ‘deterrence’⁶ (Gammeltoft-Hansen and Tan, 2017), ‘technologisation’ (Hirsch, 2017) and ‘contact-less control’ emphasise different aspects of this process that go beyond discouragement and pay attention to proactive efforts to restrain population movements towards Europe (Moreno-Lax and Giuffré, 2017, p. 82). Martin Lemberg-Pedersen (2019, p. 248) assembled different elements to define externalisation as ‘processes whereby actors complement policies to control migration across their territorial boundaries with initiatives that manifest such control pre-emptively, through the respatialisation, off-shoring or outsourcing of control practices’. Some scholars have worked on the study of ‘labelling’ and the ‘categorisation of migration’ as a way of controlling international mobility, which are a constitutive part of the externalisation of migration control (López-Sala & Godenau, 2017; López-Sala and Amador, 2020; Sajjad, 2018; Sigona, 2017; Stepputat & Nyberg-Sorensen, 2014; Zetter, 1991, 2007). To prevent the departure of unwanted migrants and potential refugees from their countries, States have developed different mechanisms to block transit, delocalised asylum procedures and visa procedures limiting access to the territory and to international protection (Garcés-Mascareñas and López-Sala, 2021).

As part of externalisation measures, scholars have conceptualised what it has been called ‘dissuasion paradigm’ (López-Sala, 2015; López-Sala and Amador, 2020) as a ‘strategy directed at containing irregular immigration, but also at creating a general disposition to inaction that reduces the intention of would-be migrants to migrate before they leave their countries of origin, as well as discouraging further attempts by irregular immigrants who were intercepted when already en route or in the destination country’. In particular, López-Sala (2015, p. 522), uses ‘dissuasion’ to refer to ‘the set of proactive or reactive measures developed and implemented by a state... with the objective of preventing emigration from countries of origin, impeding arrivals’. She specified three subsets of

⁶ There is a consensus among scholars that after the Cold War, policies in Europe aimed to block and deter arrivals into Europe. This deterrence goal was progressively shown in a normalised form of policy making through direct and indirect measures to frustrate access to states territories (Gammeltoft-Hansen and Tan, 2021). These measures are the embryo of the externalisation processes, a tool to neglect access to protection and to the territory to potential circumventing the obligation to protect. In this context, mainly since the 1980s, European borders were progressively restricted with the creation of the European Space of Freedom, Security and Justice and the consequent closure of the external borders. The creation of a common space with Schengen provoked the closure of the external borders pushing Member States towards a common approach to migration and asylum.

dissuasive strategies: preventive measures, which are implemented in the countries of origin; dissuasion and coercive measures, which are implemented in routes and at borders; and repressive measures, which are implemented in the receiving countries. Repressive actions specifically refer to deportation, detention and geographic confinement, police control and identification, including identity checks on the streets (López-Sala 2015, p. 523).

As a result of the decision to move the EU's border control beyond each of the Member States' national territories, migration issues have been included in the EU's external action (Commission of the European Communities, 2002), reinforcing the partnership with the countries of origin and transit as part of a process of externalisation (Lavenex, 2006; Lavenex and Wichmann 2009, Lavenex 2015; Lemberg-Pedersen, 2012; Moreno-Lax and Lemberg-Pedersen, 2019, Lo Coco, 2021). This cooperation has resulted in agreements and external relations (Cassarino, 2010; Gabrielli, 2017).⁷ Thus, deportation involves cooperation with third countries, which usually takes the form of readmission agreements (Cassarino, 2010, p. 9). These agreements are often memoranda of understanding, arrangements, pacts and readmission clauses. As they are usually informal diplomatic cooperation arrangements, these kinds of agreements are difficult to monitor, since they are not necessarily published in official journals, nor are they always recorded in official documents (Cassarino, 2010, p. 9-11).

In essence, the idea of externalisation aims to encompass different actions to transfer borders to locations outside each Member State, which means pushing borders into remote control locations. For the purposes of this dissertation, externalisation is the export of EU migration policies to third countries of transit and origin. This involves the transfer of the dual logic of protection and control, detention and deportation, as well as measures to protect the rights of migrants, refugees and asylum seekers. As will be illustrated below, externalisation is a process which is imbricated with coloniality, which is why the externalisation of migration policies often affects countries with a history of colonial domination.

Identification, detention and **deportation** are part of externalisation and are fundamental elements of the European migration policies regardless of where they occur (Flynn, 2014). These policies can

⁷ The increased importance of migration issues in the external relations between the EU, Member States and third countries has led to a significant articulation between national and regional politics and migration issues. This has been particularly significant in the negotiation of conditionality in development policies of Member States and the EU. There is an extensive literature addressing the junctions between development policies and migration, conditionality and security, which has explored how these issues penetrate external relations using migration issues as element of negotiation of intertwined with other areas of interests (Bakewell, 2008; de Haas, 2010; Smith, 2016). In the same line, externalisation has somehow transferred power to third countries. This transfer has turned migration into a negotiation issue or 'weapon' (Greenheel, 2010; Garcés-Masareñas, 2021). This has been highly visible in recent years in the external borders of the EU, for example, in the management of the arrival of migrants in Bielorusia or in Ceuta in 2021. This new scenario of negotiation by putting migration-related pressure on EU countries has been conceptualised as 'weaponisation of migration'. Within the context of the reconceptualisation of the power relationships between the EU and third countries on migration, Nora El Qadim notably discussed the capacity of the negotiation of conditionality by third countries (Morocco) with the EU and Member states (El Qadim, 2010, 2018). Therefore, migration issues and third countries have taken on an important role within political negotiations in foreign affairs.

be implemented or facilitated at the origin, transit or receiving countries, and even at borders. There is a burgeoning academic literature on deportation which has established the concept of a ‘deportation regime’ to describe the working of states towards the forced removal of undocumented migrants and ‘bogus’ asylum seekers (De Genova and Peutz, 2010; Lemberg-Pedersen, 2022). The notions of ‘deportation continuum’ and ‘deportation corridors’ are defined ‘not as singular events of physical removal enforced by a state but, instead, as processes spanning multiple stages, spaces and scales as well as temporalities, actors and interests’ (Lemberg-Pedersen 2022, p. 122-136). Barak Kalir (2019, 19) proposed the term *Departheid* ‘to capture the systemic oppression and spatial management of illegalized migrants in Western liberal states’. He also introduced race into the definition of deportation, thereby connecting it with colonial history and highlighting the ‘continuities between present oppressive migration regimes and past colonial configurations for controlling the mobility of ... “subject races”’ (*ibid.*). Within this dissertation, the term ‘deportation’ refers to the removal of foreign nationals from a territory, irrespective of the different legal forms it may take in different countries.

While the conceptual framework referring to coloniality and racism will be illustrated below, it is essential to mention at this point that externalisation and deportation are understood as processes linked to coloniality and racism or, in other words, as a continuation of colonial power over other territories and people. In this context, ‘race’ is conceived as a naturalised effect of a racist regime, a fact of racism (De Genova, 2018, p. 1770; El-Enany, 2020, p. 7), whereas ‘racialisation’ refers to the process by which people are embedded within hierarchical differentiation based on a colonial racist history and influenced by policies, politics and police practices (Fanon, 2009; Grosfoguel, 2016; Kalir, 2019, p. 480; Mayblin, 2017, pp. 29-49). The processes of externalisation, detention and deportation of racialised groups at borders cannot be understood without considering the notions linked to coloniality, as these processes rely on countries that were previously subject to the metropole (De Genova 2018; Kalir, 2019).

Moreover, the concept of **exception is** fundamental for this dissertation. Exception is conceived here, not as an absolute category, but exclusively as the absence of law affecting certain spaces or situations where resistance is possible; and as bare life in the sense of the categorisation of migrants as manageable (Agamben, 2019; Lemberg-Pedersen, 2022; Lo Coco, 2023). As exception is understood as the absence of law, it is important to connect it with impunity and lack of punishment. In a context of permanent violations of human rights, the law is not applied. Detention and deportation are understood as exceptional measures to be applied to control the mobility of racialised groups. In terms of this research, exception is linked to human rights violations and has to do with impunity for those violations. Exception appears when the death (or killing) of migrants (or bare life in biopolitical terms) is not punished because law is absent.

The violation of human rights is often manifested in the form of **violence**. The complexity of the phenomenon of violence makes it difficult to formulate a precise concept of what it means, or of what should be understood by violence (Churruca, 2015, p. 319). Expansive definitions of violence are frequently modelled on the so-called structural violence, repression and social suffering caused

by poverty, repression and alienation generated by the set of structures that do not allow for the satisfaction of needs (Galtung, 1969). This is an important basis for the idea of violence within this research. However, due to the lack of time and space, an extensive operational definition of violence will be applied in this dissertation; it is understood here as a series of tools targeted at racialised migrants, which give rise to human rights' violations and a state of exception though action or inaction.

Protection is central to this research. It is a complex concept related to an effective access to rights, which encompasses international human rights law and the extension of different categories of protection within migration policies (Betts, 2010; Ferri, 2012; d'Orsi, 2011; Zetter, 2014). In this dissertation, protection refers mainly to the development and respect of human rights specifically focused on three elements: first, International Human Rights Law, which was generalised and positivised particularly during the 1990s (Bobbio, 1990); second, to International Humanitarian Law, which directly tackles protection in conflicts; and third, to International Refugee Law (Churruca and Eguren, 2013). The general framework of human rights refers to the process by which the legislation and narrative of protection have proliferated and permeated the international, regional and national vocabulary and practices of migration control.

The key cross-cutting concepts used in this research have now been defined. The following section addresses the theoretical framework of this dissertation, which mainly introduces and discusses (1) biopolitical approaches to migration and border control, (2) the simultaneous logic of protection-control in the context of the EU's externalisation of migration policies, and (3) the post-colonial critiques of the study of migration and borders.

- *Biopolitical approaches to migration and borders*

The theoretical developments within biopolitics⁸ have been discussed by a significant number of pieces of migration research tackling contradictions and ambiguities at borders. These ideas, terms and concepts serve to capture the ambivalence of a policy that engages with population by simultaneously controlling it, making it vulnerable, and protecting it. Migration studies and the study of borders dynamics are strongly interconnected with biopolitical conceptual developments. The connection between biopolitical approaches and migration studies relies on the fact that border control and the legitimate use of force are constitutive elements of the modern State. 'The production of territory – and most crucially its demarcation by practices of frontier marking and control – serves as a precondition for the government of population' (Walters, 2011, p. 139). The biopolitical

⁸ It is important to mention that there have been few studies conducted from a biopolitical perspective on gendered violence; in other words, on the gender-specific consequences of the EU's migration policy externalisation (Stock, 2018; Tyszler 2018, 2019). Some of those developments have analysed different types of violence affecting women when they cross borders, introducing the notion of blackness as an axis of domination. Freedman et al. (2023) recently published a book on the gender of borders that analyses the gendered impact that borders have on migrants' experiences. They call for in-depth empirical research to discover the class, gender and race inequalities that shape contemporary borders. On this note, race is under-researched, particularly in the study of the Spanish-Moroccan border, where the lack of information and transparency makes the intersectional study of migrants' experiences difficult.

paradigm focuses on the very relation between governance, politics population, sovereignty and power over life (and death).

Biopolitical concepts are the basis for a wide range of research addressing violence, governance, security protection, exception, impunity and death at borders. Those concepts and ideas were mainly developed by Foucault, Giorgio Agamben and Roberto Esposito (Foucault, 2000; Agamben, 2016, 2019; Esposito, 2005, 2008), which gave rise to a significant area of research on migration. The academic literature on migration and border control often reflects upon ideas developed by political philosophers who raised questions about the dynamics of power and control over populations. They constitute the core concepts in the study of the embryonic biopolitical opposition in modern politics between the protection of life and the production of death (Hardt, Negri, 2001, Foucault, 2012, Esposito, 2005, Agamben, 2016, Agamben, 2019). The concept of governmentality examines the ways in which power is exercised to govern individuals and societies and is therefore a useful tool to understand migration governance (Walters, 2015).

Foucauldian concepts have had a confirmed impact on migration studies. Biopolitics, as stated by Michel Foucault, summarises the modern transition from the right of sovereignty ‘to take life or let live’ to the right of sovereign power ‘to make life and to let die’. When it comes to migration studies, these two sides of the argument have produced two different theoretical understandings which have shaped different views and understandings about migration and migrants. The first is a positive and vitalist drift, and the second is a negative one that prioritises the production of death, known as *thanatopolitics* (Agamben, 2016) and later, *necropolitics* (Mbembe, 2011). The contradiction between protection of life and the production of death, in their positive and negative interpretations, is applied to the study of migration.

The conceptual development made by Agamben (2019) on the state of exception is particularly useful for this dissertation. The state of exception is at the intersection of violence and the law (Agamben 2016, pp. 84-89). The definition of ‘exception’ (Agamben, 2019) articulates the relationship between sovereign power, violence and law, and is understood to be the institutionalisation of domination (Foucault, 2000). Agamben (2019) defined exception as the specific moment at which the law is suspended to ensure its own continuity and its very existence. The absence of law (exception) is a permanent contradiction, but it is also necessary for the existence of sovereign power. For Agamben (2019), the suspension of law does not mean the elimination of the law, but the absence of it, which is what it is materialised at some international borders.

In this context, it is important to consider how lives are governed under a state of exception. Agamben (2016, p. 147-156) stated that bare life is an analogy for sovereign exception, opposed to and trapped by violence. When there is bare life, perpetrators remain unpunished because, even though bare life is taken, this is not deemed to be a criminal offence. In terms of migrants’ human rights violations at the EU’s external borders, impunity appears to be a common occurrence. The events of 24 June 2022 at the Spanish-Moroccan border aptly exemplify how impunity is guaranteed by the state when bare life is killed. Despite the images of violence against migrants and the (at least) 37 black people who died as a consequence of the police operations and inaction, the Spanish Public

Prosecutor did not investigate these facts because it was concluded that there were no grounds for criminal charges (Iridia, 2023).⁹

However, Agamben's ideas of exception and bare life have been heavily criticised by several migration researchers because these are absolute concepts, which rule out any opportunities and space for resistance (Mezzadra, 2005, 2012; Núñez-Chaim, Varela-Huerta and Glockner, 2023; Papadopoulos et al., 2008; Varela-Huerta 2007, 2013). These critics based their arguments on positive interpretations of the biopolitical contradiction between life and death combined with feminism. They regard migrants' agency and subjectivity as constituting a power dynamic, a form of self-organisation, a means of resistance and political subjectivity (Mezzadra, 2005). This dissertation acknowledges that migrants' have agency, resistance and the ability for self-organisation; however, it does not analyse these factors. It conceives exception not as an absolute category, but exclusively as the absence of law that affects certain spaces or situations where resistance is possible, and bare life as the categorisation of migrants as manageable (Lemberg-Pedersen, 2022; Lo Coco, 2023).

Thus, biopolitical developments are essential in order to understand the problematic relationship between the widespread use of notions of human rights protection within the EU's migration policies, on the one hand, and the violations of migrants' human rights and production of deaths at EU borders, on the other (Lo Coco, 2021). Specifically, Esposito's concept of *immunitas* provides a radical look at borders and migration policies, and attempts to bridge the gap between the migrant protection and migrant control/deaths. *Immunitas* is a very complex concept which serves to provide a theoretical understanding of modern politics with regard to protection and death. It mainly contributes a theoretical structure which simultaneously considers protection and control/death by bridging this contradiction (Lo Coco, 2021).

Esposito suggests that *immunitas* is the main constitutive element of modern Western politics—and not biopolitics—and presents the immunity-based negation of life as the logical consequence of the protection of life. The idea of *immunitas* is complex, but it is essential for an understanding of contemporary Western politics on migration. It assumes that the biopolitical contradictions typically inherent in modernity have permeated the political language of modernity, including borders and migration policies and politics (Esposito, 2005).

Thus, biopolitics entails an embryonic duality in contemporary politics: the simultaneous protection of life and the production of death. In the words of Roberto Esposito (2008, p. 10), 'el oxímoron más punzante' of modernity 'reside ...en la manifiesta superposición entre declarada defensa de la vida y efectiva producción de muerte' ['the most poignant oxymoron' of modernity 'lies ...in the manifest overlap between the claim to protect life and the actual production of death']. Immunity is an account of itself, a metaphoric narrative of the self, which gives meaning to the modern order while concealing the underpinning structures of power (Esposito, 2005; Lo Coco, 2021). In this context, Esposito's argument shows that both drifts and ambiguities are part of the same logic, and how the death of the others reinforces the life the one's political community. This has the potential to engage in a radical

⁹ *Diligencias de investigación 1/2022, Unidad de Extranjería, fiscalía general del Estado* (Investigation procedures no. 1/2022, Immigration Unit, Spanish Public Prosecutor's Office).

critique of the EU's migration policies because it puts the legitimization of violence and death of migrants, of the 'others' at the heart of human rights narratives (Lo Coco, 2021).

- *The simultaneous logic of protection and control in the EU's externalisation*

Since the 2000s, border externalisation has become a key feature of the European Union's (EU) migration policy. This policy, consisting simultaneously of control, detention and deportation measures, as well as measures to protect the rights of migrants, refugees and asylum seekers has been exported to third countries. This double logic, which has been termed 'protection/control', has had an impact on migration policies in neighbouring countries, mainly on the southern shore of the Mediterranean, and has taken the form of various complex, interconnected political and economic agreements.

Protection and restrictions as a way of controlling migration constitute a fundamental contradiction that characterises the global infrastructure of contemporary global mobility (Spijkerboer, 2018). This biopolitical modern contradiction is present in European migration policies and has successfully penetrated externalisation. It has done so through the development of protection, restriction/detention and deportation in third countries. Externalisation exports the implementation and development of both protection policies and detention and deportation practices beyond the EU's borders mainly by reinforcing its partnership with third countries.

The externalisation of borders plays an important role in transferring the biopolitical contradiction between the stated goal (the protection of life) and its actual consequences (the production deaths of third-country nationals/others) into third countries (Lemberg-Pedersen, 2015). External migration politics and policies have turned migrants into both threats and subjects of protection, who must be both simultaneously controlled and (theoretically) protected (Moreno-lax and Lemberg-Pedersen, 2019). The protection/deportation logic has been transferred to third countries, particularly to the Maghreb, embedded in the externalisation of migration control and has been crystallised into cooperation and political agreements (Lo Coco and González-Hidalgo, 2021; López-Sala, 2015).

Christina Boswell (2003) argued that there is a double strategy within the EU externalisation process which involves the development of protection frameworks and the implementation of deportation systems in third countries. The deportation regime is established under bilateral and multilateral agreements that specifically include legal provisions related to deportation (Boswell, 2003, 622; Cassarino, 2021). However, little empirical academic research has been conducted on the ways in which those logics have been materialised and how they affect migrants' experiences. The Spanish-Moroccan border is particularly under-researched, and there is a significant gap in the study of black migrant's experiences in Morocco. There is a paucity of data collected about the experiences of migrants facing detention or deportation in a context of externalisation. While research has been mainly conducted on the EU's practices at borders, there are few studies supported by fieldwork on the ways in which third countries have developed protection/control logics. Furthermore, deportation practices have received little scholarly attention.

The simultaneous existence of high levels of violence against migrants and the increased number of deaths at EU borders within a framework of protection, together with the incorporation of humanitarian actors and narratives into the governance of borders, have become an area of interest in the academic literature. Humanitarian studies have noted that states increasingly make use of a humanitarian narrative and vocabulary to enable restrictive and coercive migration control measures, such as deportation or border control (Lemberg-Pedersen 2020, p. 4). The EU is the only international organism that explicitly mentions human rights as an objective of its external action (Gómez Isa, Churruca Muguruza, & Wouters, 2018). It also encourages the creation of protection frameworks in third countries by different methods (Lo Coco and González-Hidalgo, 2021). But the reality of human rights violations, exception and impunity is a contradiction that has been transferred beyond borders through externalisation (Ferrer-Gallardo and Gabrielli, 2018).

According to Carling and Hernández-Carretero (2011), the narrative of protection within the EU's migration policy is not only a rhetorical tool, but also an instrument for legitimising externalised practices of control (Lo Coco, 2021). Carling and Hernández-Carretero argued that those narratives serve to justify questionable practices that violate migrants' human rights (2011). Similarly, Moreno Lax (2018) reflected on the humanitarian government, which *scars through control and controls through care*, a logic that has been introduced into humanitarian language policy documents and agencies (Moreno-Lax, 2018). Following the idea of *immunitas*, it has been argued that, 'by emphasising the dangers of migration, policies that prevent migrants from departing can be framed as benevolent and protective' (Carling and Hernández-Carretero, 2011, p. 45). The narratives produced by the dominant power justifying restrictions and control, violence and death of migrants under claims of protecting their human rights have been crucially brought to light by critical humanitarian studies (Gazzotti, 2020, Lemberg-Pedersen, 2020; Moreno-Lax, 2018).

The problematisation of this contradiction emerged from biopolitics, connecting biopolitical thinking and concepts to the study of border controls, refugee camps and asylum centres, which are interpreted as spaces for simultaneous control and care in relation with humanitarian action (Calhoun, 2010; Cuttitta, 2018; Fassin, 2012; Pallister-Wilkins, 2015; Ticktin, 2011; Weyzman, 2011, p. 51). Humanitarian intervention has been often linked to the idea of emergency and exception. This specific area of research has underlined that 'humanitarianism has become an integral part of borderscapes where suffering and death are not connected to punctual "crises," but to chronic situations of endangerment of migrant lives' (Gazzotti, 2020, p. 409). According to Salter (2008, p. 365), 'the state border is a space of permanent exception', and if nothing changes, it will be perpetual.

Migration and border studies have pointed out how violence and repression coexist with a widespread legal framework to protect human rights and the progressive use of humanitarian language in border management (Carling and Hernández-Carretero, 2011; Cuttitta, 2018; Fassin, 2017; Moreno-Lax, 2018; Pallister-Wilkins, 2020; Ticktin, 2016). This research mainly focuses on how violence at borders is legitimised through the protection of life, but they in fact produces death at borders. The inclusion of a 'humanitarian reason' in the governance of migration, borders and refugee camps has also become an area of interest (Agier, 2011, p. 183; Andrijasevic and Walters, 2010, p. 979; Domenech, 2013; Fassin, 2012).

Detention and deportation have been analysed from a biopolitical perspective. Biopolitical studies have focused on deportation as a means used by sovereign power to secure borders. Biopolitical approaches to deportation have focused on the exercise of sovereign power when controlling people ‘out of place’ (Andrjasevic, 2010; De Genova and Peutz, 2010; Gibney, 2013; Isakjee et al., 2020; Lemberg-Pedersen, 2022; Lo Coco, 2023; Peutz and De Genova, 2010). They often analyse specific laws, instruments and practices of exceptionality, and their role during deportation (Andriasevic, 2010; Kalir and Wissink, 2016; Lo Coco, 2023); they also examine the use of protection language that is at the service of restrictive measures and violates what it claims to protect (Chimni, 2000; Lemberg-Pedersen 2020, p. 4).

- *Postcolonial approaches to migration: bringing racism into the analysis*

Biopolitical approaches are essential in the study of contemporary borders. However, they are excessively focused on Europe, and they have been recently criticised for being race-blind. Several migration scholars have argued that migration studies have completely ignored colonialism and racism (Mayblin and Turner, 2021: 12, 49). Dominant perspectives have traditionally hidden asymmetric relations of power, inequality, racism and the hierarchisation of the world’s population. Foucault’s theories and their further development have been identified as suffering from colonial amnesia, which has contributed to lowering a veil over colonial and racial oppression (Grosfoguel, 2012, 2015). As a consequence, they have received criticism from different approaches, mainly from feminism and postcolonialism. It is impossible to understand the violation of rights at borders together with violence and death unless racism and the history of colonial domination are brought into the analysis.

The argument of this dissertation relies on the idea of the colonialism associated with the historical evolution of capitalism and therefore, as stated by Mbembe (2016) and Fanon (1965), as a process that is intrinsically intertwined with racism and violence (De Genova, 2018; El-Enany 2020). In the same vein, decolonial theorists and Marxists, together with black studies, have problematised the relationship between the development of capitalism, colonialism and racism (Robinson, 1983). Despite the different theoretical argumentations on definitions of race and different grades of linkages with capitalism, and colonial expansion, what is clear is that ‘racial differences became central to the organisation of capitalism’. In this context, racism is essential to the understanding of migration policies and practices at EU borders. It must be taken into consideration when analysing violence, rights violations, exception and impunity of racialised migrants at borders (Lo Coco, 2023).

However, ‘critical migration studies...have the tendency to forget about post-colonial racism and racialisation and instead promoted an understanding of migration that was disconnected from postcolonial analysis’ (Lemberg-Pedersen, 2019; Tudor, 2018, p. 1065). But a ‘post-colonial turn has begun to emerge and is questioning assumptions about the connections between racism and migration’ (Tudor, 2018, p. 1065). In a similar vein, Mayblin and Turner (2021, p. 55) stated that ‘race became a global system of categorisation through colonialism. Race was not only invented to rule colonies, but it also shaped the organisation of social relations, identities and systems of labour

in European metropolises'. There is a significant gap in the academic literature when it comes to empirical analysis supported by case studies on how racism and exceptionality affect racialised migrants, normalising violence against them and often causing their death (El-Enany, 2020)

This dissertation understands the colonial history of domination as a fundamental element in the study of the present, particularly when it comes to migration at EU borders. This argument holds that the contemporary regime of international mobility has been built on colonial racism and capitalism and that it is embedded in migration policies and practices, specifically in the EU.

The study of colonial history is needed to understand migration policies and border control, forced displacement, border and refugee regimes and migration policies. Despite the decolonisation processes, 'colonial logics and assumptions about the world and the various peoples who inhabit it have in many ways endured' (Lemberg-Pedersen et al 2022, p. 11; Mayblin, 2019). Perspectives coming from power only take the point of view of the dominant sectors, ignoring 'others'. It is essential to look at the implication of European colonialism in these processes for over fifteen centuries. This included the forced displacement of different groups of indigenous populations during the colonisation period for slavery purposes (Gilroy, 1998) and during the decolonisation period, and how all of this relates to today's mobility regime. Lemberg-Pedersen (2019) has explored the connections between the systems of immobility during slavery.

Post-colonial migration studies have recently included the ideas of anticolonial and post-colonial authors and have finally included concepts and terms from Latin American de-colonial proposals such as the concept of coloniality (Grosfoguel, Oso and Christou 2015; Quijano, 2000; Mignolo, 2000).

Anticolonial authors mainly Aimé Césaire (1955) in 'Discourse sur le Colonialism' and Franz Fanon (1965) with 'le Damné e la Terre' and 'Pau Noire, Masques Blancs' (1952) are indispensable for incorporating colonial history and racism into different areas of research, including that of migration. They placed violence and race as intertwined features of colonialism, with race being at the centre of the hierarchy. Race, as a process of categorising people, justified colonies and used different forms of violence, while building patterns of discrimination within colonialism (Mayblin and Turner 2021, p. 52). There is no colonialism or anti-colonial movement without violence. This is an important element introduced by Fanon which is central to the theoretical structure of this dissertation. Fanon's conceptualisation helps to analyse the use of violence by both the state and migrants in their resistance at borders.

During the 1980s and 1990s, some lines of thought examined colonial history. This included some Marxist authors, whose analysis were based on dependency theory and (later) on world system theory, although they did not sufficiently account for the role of race, gender and colonialism (Grosfoguel, 2011). Immanuel Wellerstein's world system theory (2004) complemented the previous Marxist classical arguments on inequalities by arguing that 'core regions' (the global North) were central spaces for the domination of the peripheries (global south, third world) through their incorporation into the global economy (Sassen, 1999). Based on the Marxian argument on the historical necessity of imperialism by capitalism, the theory of dependency brought into the analysis the economic exploitation of the underdeveloped Third World by certain countries. In this vein, international

migration has to do with the division of labour and therefore, labour migration resulting from the incorporation of an increasing number of states into the new global economy (de Haas and Miller 2014).

Connected with anticolonial movements, Third World Approaches to International Law (TWAAIL) have critically re-examined the colonial foundations of law, in particular, of international law. This perspective argues that international law has played a key role in the subordination and domination of non-European people. Even though this population have been systematically silenced by dominant discourses, Anghie (2005) and Prashad (2012) have identified the implication of Europe and the exclusion of the ‘third world’ from the shaping of the contemporary international system. Prashad used the term ‘Third World’ in order to strengthen the political projects coming from countries such as Egypt, Cuba, India, Iran, Senegal and Algeria, among others, whose politicians had important alternative roles in geopolitics during the Cold War, and consequently, in the shaping of the international system. TWAAIL are at the core of a new body of work which explores colonial legacies within international migration law and related refugee phenomenon approaches often bypassed by Eurocentric perspectives (Anghie 2005; Chimni 1998).

Post-colonial approaches emerged from three theoretical studies: ‘Orientalism’ (1978), written by the Palestinian Edward Said, which constitutes a powerful analysis of how colonial powers and Western academia reproduce colonial difference; ‘Can the subaltern speak?’ (1988) by Gayatri Chakravorty Spivak, who problematised the representation of subalterns in the West; and Homi K. Bhabha’s ‘The Location of Culture’ (1994), which investigated identity within colonialism. These three authors shaped the embryo of post-colonial studies which would later be incorporated into the analysis of migration.

Decolonial developments present colonial history and the creation of modernity as interconnected processes. Thus, colonial empires, while no longer standing, have left their still-present legacies in today’s world structure. For decolonial scholars, imperialism, the Industrial Revolution, the Enlightenment, the hierarchisation of the population and racism are the other side of the coin of colonialism. These developments are mainly linked to Latin American thinkers such as Walter Dignolo (2000), Anibal Quijano (2000) and Ramón Grosfoguel (2007), whose contributions have included as the notion of coloniality and have crystallised into academic efforts to understand the many ways in which colonial legacies are in evidence today.

Coloniality exists in terms of power, being, and knowledge. Decolonial projects aim to dissociate their understandings and theoretical productions from the modern colonial time and space. Although this is beyond the scope of this thesis, I will make use of the concept of coloniality, without analysing the proposals made by decolonial authors.

On coloniality

Coloniality is understood as the continuity of colonialism and might be useful for reflecting on the continuity of the racist colonial structure in contemporary migration governance logics, legislation and practices. As stated by Cazzato (2016, pp. 3), coloniality is ‘the invisible but constitutive side of the whole of modernity’. By applying this concept, migration researchers aim to break away from the reproduction of the race-blinded analysis that has characterised migration studies. Race-blindness

ignores the colonial history of domination within both migration control theories and practices. The concept has proved highly fruitful in taking a distance from those perspectives that reproduce race-blind analysis within migration studies that study borders and international mobility by the inclusion of racism and colonialism (Grosfoguel, Oso, & Christou, 2015).

The study of externalisation and deportation has similarly incorporated race and racism into research processes. They have emphasised that the widespread, institutionalised deportation regimes are a continuation of the colonial violent devices used against racialised groups. The postcolonial literature has shown how the colonial logics used in managing non-white populations have resulted in a general *Deapartheid* (Kalir, 2019, p. 20; van Houtoum, 2010). According to El-Enany (2020, pp. 7, 11), the use of certain legal categories is the basis for racist violence, generating a scenario where the racialised poor are systematically controlled, policed, deported and killed. Deportation is presented as a practice anchored in colonial logics and practices.

The Spanish deportation system is in line with the definition of *Deapartheid* provided by Kalir (2019). *Deapartheid* in Spain involves violent exclusion which may even result in death during detention and deportation. The Spanish deportation system is characterised by features that are similar to those found in other EU countries. These common features are associated with the reproduction of logics and practices of colonial management of non-white racialised populations. Since Spain's entry into the EU, Spanish law has embraced colonial racism, creating hierarchical categories that contribute to the racialisation of deportable people.

On race and racism

When it comes to migration control, it is important to acknowledge that control of mobility have been historically intertwined with race and racialisation (Mayblin and Turner 2021, p. 67). Mayblin and Turner (2021, p. 50) dedicated a whole chapter of their last book to 'race and racism in international migration', where they stated that 'race' has often not received analytical attention. Rajaram (2018) pointed to the lack of recognition of race and class within the study of migration and refugee groups. Scholars such Mellino (2019), De Genova (2018) and Tudor (2018) have similar positions on the inclusion of race and class in the study of migration. As race is interconnected with colonial history and colonialism has been silenced within migration studies, racism experienced similar concealing mechanisms.

Race underlies the structure of mobility and is captured by law (Mayblin and Turner 2021, p. 73). It is important to underline the need to acknowledge colonial matrices of power in historical and de-politicised analysis, revealing domination, hierarchies and particularly racism in the governance of international mobility. This approach involves considering that international law, and particularly refugee law, together with citizenship and border control, might have its origins in colonial history. This has different implications for the study of migration that are relevant to this thesis, in how racism is manifested in migration policies and practices. Specifically, this refers to how racism is crystallised in deportation practices, which have specific legacies when it comes to EU migration policy and human rights.

This dissertation understands race as the product of racism, and racism is considered to be intertwined with colonialism as a 'sociopolitical fact of domination' (Achiume, 2022; Mbembe 2016;

Mayblin and Turner 2021: 50; De Genova 2018: 1770). It is only possible to reflect on the nexus of racism and migration by bringing into the analysis Europe's colonial past and post-colonial legacy (Tudor 2018, p. 1066). Colonial logics are imbricated with the racial hierarchisation of the world's population (Fanon, 2009; Mbembe, 2016). As stated by Achiume (2022), contemporary borders are inherently racial. When it comes to migration, 'racism defines social groups that can be legitimately abandoned and sacrificed in the name of the wealth of the rest of the population' (Gazzotti, 2020, p. 412).

The main landmark author in the theoretical development of race hierarchies in colonialism (and in this dissertation) is Franz Fanon (2009). He connected racism and hierarchisation of humans with colonial legitimation and violence. He developed the idea of a categorisation of humans through the concept of 'zones of being' and 'zones of non-being'. Those zones are the dividing line between humans and non-humans. Belonging to one group or the other is marked by colour, culture or religion (Grosfoguel, Oso and Christou, 2015). Groups are racially organised through a process that racially categorises them in relation to the dominant other, and through the marking of racialised bodies as being superior or inferior (Grosfoguel, 2012, 2016; Grosfoguel et. al 2015.) Within this rationale, colonised people are categorised as being less worthy than colonisers, thus facing both physical and psychological violence. Race and racism have succeeded in categorising human populations by coding relationships of power into hierarchies that can be naturalised (Mayblin and Turner 2021, p. 53).

This thesis relies on the idea that racism must be included as an inherent characteristic of colonial history and therefore of the capitalist global economy when studying migration policies from a biopolitical perspective.

3. Methodology

Primary and secondary data is used in order to address the main research question. The thesis reviews and integrates the academic literature on migration, particularly on the EU's externalisation of border control, critical borders studies, biopolitical conceptual developments, and post-colonial conceptual developments on migration and borders, paying particular attention to Spain and Morocco.

All of this information has been triangulated and complemented with primary data produced by the researcher during the research period (2018-2022) and the fieldwork conducted between November and December 2020, and January and August 2021 in Tanger and Rabat (Morocco). Primary data has been produced and collected from (1) EU policy documents, (2) 22 non-structured qualitative interviews during the fieldwork period and (3) statistical data on deportation from Eurostat (Lo Coco, 2023), as well as from a specific printed document obtained in Rabat from the Moroccan government (Lo Coco and González-Hidalgo, 2021).

Before outlining the methodology used in the research, it is worth making some methodological observations.

Research on human rights by its very nature is full of obstacles. These obstacles have to do with the fact that states and their institutions violate human rights and therefore, they often conceal their

actions by placing barriers in the way of research projects. Thus, research on human rights faces significant difficulties in accessing information, police practices and migration policies due to their supposed link to national security issues and diplomatic relations (Iridia, 2023).

As recently stated by the Office of the High Commissioner for Human Rights (OHCHR), information related to identification, detention practices, deportation, pushbacks and international coordination between countries for the purpose of migration control is highly difficult to investigate. This is a consequence of a political aim for States to obscure human rights violations at borders.¹⁰ This is particularly true in the case of EU countries and with regard to detention conditions, agreements and forced displacement and deportation. In fact, in 2022 UNHCR warned about the increasing violence and human violations identified at EU borders.¹¹ This violence and violation of racialised migrants' human rights have been denounced as contemporary forms of racism.¹²

The case of Spain is particularly worrying, as there is no public systematic and available data on migration policies and political directions; there is no information on irregular immigration management or data on the nationality, age and gender of migrants who arrive by irregular means (by sea or by land) (Iridia, 2023); or regarding deportation (Iridia, 2020). The available information is fragmented and difficult to access; in addition, it is not sensitive to gender, nationality, age or other vulnerabilities. There is no information on the national official strategy on migration policy. Opacity and exception are two characteristics of migrants' human rights at Spanish borders, which are commonly found within migration policies. This produces legal gaps in the legislation, such as the lack of specific legal provisions of migration centres for and lack of guarantees in the protection of fundamental rights (Fernandez-Bessa 2019, 2021; Orgaz Alonso, 2018).

Official data on migration in Morocco is difficult to access. This is even more so when it comes to detention, detention centres, forced displacement, and the deportation of black migrants. As a consequence, this situation remains almost invisible, especially for women, children and other groups which might face even more discrimination, such as the LGBTI+ community. Access to information depends entirely on testimonies, human rights associations and activists, social movements and local organisations that are active in field monitoring and in the assessment of the situation of migrants' rights in Morocco.

As human rights are a highly sensitive political issue in Morocco, related institutions such as the *Conseil National de Droits de l'Homme*¹³ (National Council of human Rights), which is the main human rights institution in the country, have been proven to lack independence when it comes to migrants' human rights. Similarly, the soft position taken by UNHCR on the situation of asylum seekers and

¹⁰ For further information A/HRC/50/31: Human rights violations at international borders: trends, prevention and accountability, April 2022: <https://www.ohchr.org/en/documents/thematic-reports/ahrc5031-human-rights-violations-international-borders-trends-prevention>

¹¹ UNHCR, 'News Comment: UNHCR warns of increasing violence and human rights violations at European borders', April 2022: <https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations>

¹² OHCHR, A/77/549: Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume - Ecological crisis, climate justice and racial justice, October 2022: <https://www.ohchr.org/es/documents/thematic-reports/a77549-report-special-rapporteur-contemporary-forms-racism-racial>

¹³ Conseil National de Droits de l'Homme: <https://www.cndh.org.ma/fr>

refugees at Moroccan borders and the IOM with regard to migrants' rights makes it difficult to obtain critical or reliable information. This situation almost forces researchers to engage in fieldwork as the only way of gathering reliable information on migrants' and refugees' rights in Morocco. This is especially true for the situation of black migrants, but also for Moroccan deportees and Moroccan migrants attempting to reach Spain. The situation of deportees from Spain or other EU countries to Morocco is silenced, which makes it extremely complicated to make contact with Moroccans who have been deported.

When conducting human rights research, it is important to take into account associated security issues. These are particularly evident when researching in countries with security risks such as Morocco, or those with a lack of transparency, such as Spain. The reason is that institutions are the perpetrators of fundamental rights violations and are adamant to conceal their practices.

The case of Morocco is rather delicate in terms of security. There is strong governmental control of the information related to human rights and migration issues. The information given by the *Conseil National de Droits de l'Homme* is often not independent from governmental positions. Something that particularly affected the progress of this dissertation was that fieldwork had to be adapted to the conflict derived from the political tensions connected with the diplomatic hostilities between the Polisario Front and the Moroccan government in November 2020.¹⁴ During the fieldwork in Rabat, Western Sahara declared a state of war which broke the cease-fire established in 1991. Those events affected security, firstly of migrants and secondly, of the PhD candidate. In addition, mobility restrictions were imposed in the country as a consequence of the COVID-19 pandemic. Visits to certain areas and contact with certain people were limited for health reasons. In certain cases, meetings were substituted for telephone conversations, specifically those in Western Sahara with black migrants waiting in Tin-Tin, Tarfaya and El-Aiún.

Repressive measures against researchers and activists are also taken by the Moroccan government if they perceive that governmental practices might be questioned. During my fieldwork in Rabat, a colleague from the University of Rabat directly contacted the Home Office, and several members of the parliament. He went through the relevant formalities to ask them some questions regarding migration policies in Morocco. He was threatened by authorities and told to stop enquiring into those issues. This illustrates how difficult it is to conduct research using official data on migration issues in Morocco. It is a sensitive topic that requires a security strategy and a sound knowledge of the field.

Human rights are closely linked to the situation of people who are affected by racist migration policies. This dissertation aims to go beyond the academic analytical goals, its main aim being to contribute to the protection of the human rights of migrants at borders and to highlight the inherent racism of the EU's migration policies. With the aim of transforming the violence, exception and impunity at borders, this thesis seeks to provide evidence of the racist component of the systematic human rights violations at the Spanish-Moroccan border in a rigorous way, by locating affected individuals as political agents of resistance.

¹⁴ El País, 'El Frente Polisario considera roto el alto el fuego con Marruecos y declara el estado de guerra', 14 November 2020: <https://elpais.com/internacional/2020-11-14/el-frente-polisario-considera-roto-el-alto-el-fuego-y-declara-el-estado-de-guerra-con-marruecos.html>

- *The Spanish-Moroccan border as a post-colonial case study*

The Spanish-Moroccan border has been chosen as a representative post-colonial example of EU borders. Within this example, the logic of control/protection is implemented, showing how EU coloniality is extended to the southern borders of the EU. Thus, this specific border has been chosen for several reasons:

(i) it constitutes a paradigmatic example of exception, impunity, violence and death of racialised groups, particularly deportation in a post-colonial geography (Johnson and Jones, 2018);

(ii) the Spanish-Moroccan border reflects colonial logics embedded in the EU's migration policy; additionally, the history of how externalisation has been used at this specific border and its relationship to migration are under-researched;

(iii) the Spanish deportation exit system is concentrated on Moroccan nationals and black migrants, and exceptional practices are often found at the border (Ferrer-Gallardo and Gabrielli, 2018, Kalir et al., 2021, p. 48). In fact, violence and pushbacks against black migrants occur on a daily basis in the practices of border control in Ceuta and Melilla (Caminando Fronteras, 2020; Iridia, 2023; SJM, 2022; Solidary Wheels, 2023). Those practices are often video-recorded by human rights organisations and journalists, but they happen with impunity in a clear state of exception.¹⁵ Moroccan nationals are the most often deported from Spain. Over the past decade, more than 50% of Moroccan deportees from the EU were deported from Spain (Iridia, 2020);

(iv) while most deportations involve Moroccan citizens, there is no clear legal framework for them, a state of affairs that is clearly linked to exceptionality, violence and impunity;

(v) there is a lack of official data on deportation (which, in addition, is neither gender-sensitive nor systematic or publicly available) (Fernandez-Besa, 2019), which means that further research is needed into the Moroccan case; and

(vi) Moroccan nationals are a unique case within the Spanish deportation system, as these citizens are the only ones that can be deported without having been registered with the police (López-Sala and Godenau, 2017, p. 159, Sainz de la Maza, 2015, 2017). These reasons explain the need to conduct further research on deportation logics between Spain and Morocco and explore their relationship to racism.

- *Fieldwork*

The fieldwork was conducted in parallel with my fellowship as an international student in the *Université Internationale de Rabat*. It was conducted over different periods of time between 2020 and 2021 in Rabat and Tangier (Morocco). It is important to mention that the fieldwork was interrupted by the mobility restrictions imposed due to COVID -19 during 2020. During the first period, the borders were closed

¹⁵ See, for example, the document produced by Human Rights Watch 'Spain/Morocco: No Justice for Deaths at Melilla Border': <https://www.hrw.org/news/2023/06/22/spain/morocco-no-justice-deaths-melilla-border>

and mobility was seriously restricted, which meant that I had to abandon Morocco and come back to Spain after the official lockdown. This entailed important economic difficulties for me in March 2020, as I had already rented a flat in Rabat for the whole period of the fieldwork but was unable to complete it. The pandemic restrictions were therefore significant obstacles to the fieldwork.

It is important to mention that I had worked on migration in Morocco between 2015 and 2016. Professional and personal networks with migrants, organised groups and human rights associations facilitated my research work in Morocco. Specifically, I had worked in Nador for a year in 2016 as a coordinator of an NGO providing humanitarian assistance to black migrants in forests. Moreover, in 2015, I had worked with UNHCR in Rabat in the area named ‘protection’. I was a visiting student at the *Université Internationale de Rabat* in the Global Studies department, where I worked with Dr Mehdi Alioua. He is a recognised authority in Morocco and a well-known migrants’ rights activist. Thanks to him I had the opportunity to ask to the Home Office for documentation on migration and deportation in Morocco. Although I never obtained a response from the Home Office, I was able to obtain a hardcopy document with data on ‘returns’, which is very difficult information to gather. This data is analysed in the second article (Lo Coco and González-Hidalgo, 2021). In addition, Mehdi provided me with key contacts for interviews and advice on how to proceed in Morocco.

Moreover, thanks to my background and experience, I have a good knowledge of human rights organisations and activists working in Morocco. More importantly, I was fully aware of the obstacles and potential difficulties that I could face during my fieldwork. This knowledge helped me to organise my work in contacting migrants and spokespersons of different organisations, local NGOs and some quantitative data on migration in Morocco. Similarly, my professional background helped me to conduct research on deportation in Spain, where official data is fragmented and difficult to access. My relationship with different associations and activists facilitated contact with deportees in Spain and Morocco for the interviews.

For the purposes of this dissertation, the fieldwork focused on two main subjects corresponding to the second and third specific goals described in the second and third publications. First, the fieldwork focused on detention, detention centres, forced displacement and the deportation of black migrants in Morocco within the context of the EU’s externalisation of migration control. The second period of fieldwork focused on deportation from Spain to Morocco (specifically, on deportation practices of Moroccan nationals to Morocco).

Part 1 of Fieldwork focused on the contrast between protection, detention, forced displacement and deportation of black migrants in Morocco. It was aimed at collecting data on human rights violations and state of exception caused by the practices of externalisation of the EU’s migration control transferred to Morocco.

-Period 1: November 2020-January 2020; August 2021.

-This period was interrupted by the mobility restrictions due to the COVID-19.

-The article entitled ‘The dual logic of European externalisation: protection and deportation in Morocco’, *Revista CIDOB d’Afers Internacionals*, n. ° 129 (December 2021), pp. 79-106, was written and published in this period.

-16 semi-structured qualitative interviews were conducted between November 2020 and January 2021, and August 2021 in Morocco. All interviewees were men (aged 20-50 years old), except for one (a female activist). As illustrated, interviews were conducted both by telephone and in person in Tangier and Rabat. They were divided into three groups: key informants, human rights associations and black migrants who at any time had been in an irregular situation.

-The interviewees were selected from almost all of the active and reachable associations, organisations and key informants (academics and activists) engaged with the defence of migrants' rights in Morocco at that time. Thus, they are the best sources of information because they are permanently in the field, they are in contact with human rights difficulties of black migrants in the country, and they are significantly independent from the governmental positions. Of course, racialised migrants themselves have direct experience of the real situation of detention and deportation and violation of rights, and so they are the most accurate sources of information on migration control and access to protection in that country.

-These interviews covered the key informants on the situation of migrants' human rights in Morocco due to the lack of official information. Mainly NGOs, human rights associations members of the organised civil society and migrants themselves were able to supply information about situation of black migrants from the field. Due to the sensitive nature of migration in Morocco, institutions do not publish information and do not engage with researchers. Similarly, it is also difficult to access information or hold meetings with institutions or Ministries in Spain.

-All interviewees were informed of the purposes of the research; they were told that they could stop the interview at any point and they were free to decide not to answer any questions they did not feel comfortable with. They were verbally offered the opportunity to use a fictitious name to ensure their anonymity, or they could use their real names if they wished to do so. The decision not to use written consent templates or documents was based on security concerns about maintaining anonymity in Morocco. Therefore, it was considered safer to leave no evidence of the participation of associations, migrants and activists.

-Tangier and Rabat have an extensive network of human rights organisations and organised civil society. Rabat is the headquarters of international bodies such as the International Organisation for Migration (IOM), UNHCR in Morocco. Rabat is a geographically important place in the study of deportations and protection of migrants (particularly black people) in Morocco. This is because (i) black migrants are illegally detained from Rabat and forcibly displaced to other parts of the country; and (ii) Rabat also receives buses with displaced black migrants (from border points to the city). It is therefore an important location for migration management in the country. In Rabat there are also a number of local associations for the protection of migrants' rights. Tangier is an important city for migration studies because it is on the geographical land border with Ceuta. It is a significant location for border control practices and migrants' strategies of resistance monitored by local NGOs and activists.

-The following table summarises the profiles of the people and the locations where interviews were conducted during 2020 and 2021. Names are fictitious unless consent was given by the interviewees for their real name to be used.

List of interviews conducted for the article entitled ‘The dual logic of European externalisation: protection and deportation in Morocco’					
	Code ¹⁶	Description	P/T ¹⁷	City	Profile
1	EPTan1	Human Rights Activist	P Tangier (Morocco)	Morocco	Activist
2	EPTan2	Human Rights Activist	P Tangier (Morocco)	Morocco	Activist
3	EPRab1	ADESGUIM <i>Association pour le développement et la sensibilisation des Guinéens migrants au Maroc</i>	P Rabat (Morocco)	Rabat: El Aiún, Tin-Tin, Tarfaya, Agadir	Guinean association for the protection of human rights
4	EPRab2	Local NGO	P Rabat (Morocco)	Morocco	Moroccan Association of Human Rights
5	EPRab3	Sthephan Mboma Ngulutu, spokesperson of Dicoma Association, Congolese diaspora in Morocco	P Rabat (Morocco)	Rabat: Temara, Hay Nada, Takadoum	Leader of the Congolese community in Rabat. Male, Congolese national.
6	Amine (EPRab4)	Nigerian community leader resident in Rabat	P Rabat (Morocco)	Rabat: Temara, Hay Nada, Takadoum	Leader of African communities, male, 47 years old, Nigerian national, forcibly displaced from Rabat to Marrakesh
7	EPRab5	Dr Mehdi Alioua, <i>Université Internationale de Rabat</i>	P Rabat (Morocco)	Rabat	Academic
8	Tarik (EPRab6)	Guinean national, male, , forcibly displaced	P Rabat (Morocco)		Guinean national, 21 years old, detained in an illegal detention centre, forcibly displaced from Nador to Marrakesh
9	(EPTel1)	Local NGO	T	El Aiún, Dajla, Tarfaya	Local association in Dajla and El Aiún
10	(ETel2)	AMDH Rabat	T	Morocco	Moroccan association of Human Rights
11	(ETel3)	Local NGO	T	Nador, Alhuceima, Ouchda (Morocco)	Local NGO
12	(ETel4)	International NGO	T	EU-Morocco	Human Rights NGO
13	Mamadú (ETel5)	Guinean male, forcibly displaced	T		Guinean national, male, 26 years old, forcibly displaced to Agadi
14	ETel6 (Bram)	Man from Mali, deported from Melilla to Mali as part of a chain	T		25-30 year-old male, from Mali, asylum seeker, deported from Spain to Morocco and from Morocco to Mali

¹⁶To facilitate reading, a coding system has been used in the body text. I have provided the names of the people and associations when they expressed their desire for their real names to be mentioned.

¹⁷ P=In person; T=On the telephone

		deportation action			
15	Omar (ETel7)	Association of Sub-Saharan migrants in Morocco	T	Morocco	Activist
16	Idrissa (ETel8)	Guinean male national, deported to Guinea	T		Guinean national, 25 years old, male, detained in an informal detention centre and deported to his country of origin in February 2021

-Telephone interviews were conducted with individuals and associations located in Nador, Tin-Tin, Tarfaya, Agadir, El Aiun and Dakhla, since there are a considerable number of irregular migrants in these cities. The interviews were conducted in English, French and Spanish with a group with people who had the following profiles: a migration expert from the International University of Rabat, two human rights activists, six members of local organisations, the representative of the Council of Sub-Saharan Migrants in Morocco (CMSM), two community leaders and four forcibly displaced and deported individuals (a 28-year-old Malian man and three men of Guinean nationality aged between 20 and 26).

Part 2 of Fieldwork. This was focused on identifying exceptional practices and violence faced by Moroccan nationals during deportation from Spain

-This period was interrupted by the mobility restrictions due to the COVID-19.

-Research from this period informed the analysis later to be published in the article entitled ‘Coloniality and Racism in the Spanish Deportation System: Exceptional Practices and Violence During Deportation to Morocco’. *Revista del Instituto Universitario de Estudios sobre Migraciones* (58), 1–22.

-Period: December 2020 and August 2021

-Six semi-structured qualitative interviews were held with Moroccan men who had been deported from Spain. The experiences and discourses of deportees are rarely investigated, as testimonies are very difficult to collect due to the stigma attached to deportation in Morocco. This is even more difficult when it comes to women (Fernandez-Bessa, 2019).

- All interviewees were informed of the purposes of the research; they were told that they could stop the interview at any point and they were free to decide not to answer any questions they did not feel comfortable with. They were verbally offered the opportunity to use a fictitious name to ensure their anonymity, or to use their real names if they wished to do so. The decision not to use written consent templates or documents was based on security concerns about maintaining anonymity in Morocco. Therefore it was considered safer to leave no evidence of the participation of associations, migrants and activists.

-The repressive measures adopted against returnees and irregular migrants in Morocco makes contacting them extremely difficult. Snowball sampling was therefore used for the selection of interviewees in an exploratory phase. The respondents’ ages ranged from 24 to 48 years

old, and most of the interviews were conducted in person in Madrid (Spain) and Rabat, Tangier (Morocco) between December 2020 and August 2021. One of them was a telephone interview. Given the difficulty in identifying deportees in Morocco, contact with deportees was based on trust, so a non-purposeful sampling strategy was used. All the testimonies were related to fast-track deportation practices which were enforced in less than 72 hours directly from police stations or from prison gates (Barbero, 2018; Fernández-Bessa & Brandariz, 2016). Fast-track deportations played an important role in the analysis of the Moroccan testimonies, as they helped contextualise what happens at the junction between measures of migration control and criminality (Barbero 2018, 2020; Brandariz and Fernandez-Bessa, 2017; Stumpf, 2016).

List of Interviews conducted for ‘Coloniality and Racism in the Spanish Deportation System: Exceptional Practices and Violence During Deportation to Morocco’				
Code	Fictitious name	Interviews	City	Profile
I1	Youssef	Moroccan national, male, deported from Spain to Morocco	Rabat	Deported from a police station first by plane and then by coach via Melilla to Nador
I2	Yassin ¹⁸	Male born in Madrid, 25 years old, Moroccan national, deported from Spain to Morocco and held in a detention centre in Madrid.	Madrid	Deported from a police station first by plane and then by coach via Melilla to Nador
I3	Mahmoud	Male, 48 years old, Moroccan national, deported from Spain to Morocco	Tanger	Deported from a prison’s gate by ferry from Algeciras to Tangier
I4	Amine	Male, 42 years old, Moroccan national, deported from Spain to Morocco and held in a detention centre in Madrid	Tanger	Deported from a police station by ferry from Algeciras to Tangier
I5	Taha	Male, 29 years old, Moroccan national, deported from Spain to Morocco	By telephone	Deported from a prison’s gate by ferry to Algeciras o Tangier
I6	Samir	Male, 27 years old, Moroccan national, deported from Spain to Morocco	Tanger	Deported from a prison’s gate from Madrid to Algeciras in a police car and then in Ferry to Tangier
6		TOTAL		

-Even though fast-track deportations are not used in the majority of cases in Spain, and the prison-deportation continuum is outside the scope of this research, the six testimonies

¹⁸ All the names are fictitious except Yassin, who wished for his real name to be used.

collected show how racialised nationals face exceptionally violent practices and are disproportionately exposed to harm in the Spanish *Departheid* (El Enany, 2020; Fernandez-Bessa & Brandariz, 2016; González-Sánchez, 2015, Lo Coco 2023; RAIN, 2017).

-In addition, fast-track deportations are highly important for the study of exception and violence against racialised people. They constitute a practice which is not covered by law and is surrounded by exceptional violence affecting racialised migrants. Although fast-track deportations have been denounced by lawyers and human rights associations (Barbero, 2021; Eruopa Press, 2015; RAIN 2017; SJM, 2014) as an attempt to prevent racialised individuals from receiving legal assistance, they continue to be a common practice by Spanish police (Lo Coco, 2023; Orgaz Alonso, 2018).

- *Reflections on gender*

This dissertation does not include a gender analysis. Gender analysis examines the relationships between women and men and the constraints they face relative to each other in achieving gender equality in a given policy area, situation or context. Gender analysis may be conducted on the basis of qualitative information and methods and/or based on quantitative information provided by gender statistics.

However, according to UNHCR,¹⁹ less than 10% of sea and land irregular arrivals (mostly) from North African countries are women. This means that approximately 70% of arrivals are men and 20% children. This situation reflects the hegemonic gender roles and spaces traditionally assigned to women, which are often more connected with private spaces and domestic work and are difficult to access (and therefore invisible) (Tyszler, 2022). There are also difficulties in accessing gender sensitive data, which is almost non-existent. Consequently, this dissertation has not tackled the gender bias involved in the violence at borders when it comes to women or the LBTIQ+ community. It was extremely difficult to reach Sub-Saharan migrants and Moroccan deportees, and all who could be contacted were men.

In addition, the lack of official gender-sensitive information is a significant obstacle to any analysis from a gender perspective on how violence and exception affect women differently. Similarly, it is very difficult to analyse other intersectional axes of domination in relation to exception and violence at borders, mainly because, in addition to the problematic access to gender-related data, information on age, disabilities and nationality is not available. Official data (provided by Spanish and Moroccan governments) does not include this information (Fernandez-Bessa, 2019, Orgaz Alonso, 2018; Lo Coco, 2023). This dissertation acknowledges the existence of specific literature that takes into consideration the resistance, agency, gender and subjectivity of migrants. This aspect of migration has been particularly studied from a gender perspective (Ruiz Lagier and Varela Huerta, 2020; Tyszler 2018). However, gender roles and their articulation with the EU's migration policies and violence have not been the focus of this dissertation.

¹⁹UNHCR Mediterranean data available in <https://data2.unhcr.org/en/situations/mediterranean>

Finally, accessing female migrants in Morocco is complex and requires longer periods of fieldwork to establish relations and trustworthy contacts in order to access women, who are generally in more private spaces (Tyszler, 2018; Orgaz Alonso, 2018). It has certainly been challenging to overcome this obstacle during the research process. Albeit unintentionally, unconscious automatic mental associations based on gender, stemming from traditions, norms, values, culture and/or experience can influence our perception. Therefore, there is a methodological gap in this regard that must be covered in further research. In this regard, few studies have been published that have used a more complex approach to the issues of identification, detention centres and deportation practices both in Spain and Morocco from a gender perspective. These include Tyszler (2018, 2019), Martínez-Escamilla (2013) and some human rights reports on the situation at the Spanish-Moroccan border from a feminist perspective (CEAR, 2020). Hence, there is a need to conduct further research on the violations of human rights, exception and violence in terms of its articulation with gender roles in the context of the EU's externalisation of migration policies.

4. Discussion

- **EU Migration policy and migrants' human rights: the protection and negation of life at EU borders**

The first article, entitled 'EU Migration policy and migrants human rights: the protection and negation of life at EU borders', was the theoretical embryo of this dissertation. This conceptual framework shows that the protection of life and the production of death are constitutive elements of Western modern politics embedded in EU migration policy (Lo Coco, 2021, p. 63). The paper discusses the paradox between a narrative of migrants' and refugees' protection that has been included in EU policy documents and the extended violation of human rights at EU borders. Anchored in a biopolitical perspective, it suggests using Esposito's concept of *immunitas* to address biopolitical contradictions in migration policies. This argument holds that human rights and the protection of life metaphorically legitimise the EU's control of migration in third countries, while blurring the underpinning logics of government, coloniality and racism. The article concludes that the protection and the negation of (certain) lives are intrinsic to the EU's migration policy. This argument is radical, because it entails that migrants' deaths are not only a negative consequence of controlling migration but an inherent characteristic of the modern migration management system (Lo Coco, 2021, p. 57).

The article outlines the implications of using a biopolitical paradigm for studying migration to illustrate the ideas of the so-called Italian theory, exemplifying Roberto Esposito's concept of *immunitas* in relation to migration. The paper introduces a philosophical reflection on the relation between *immunitas* and the responsibility towards the *communitas*. *Immunitas* comes from *munus*, which is the duty to give to others, the necessity to prioritise the necessity of others, a gift that must be restored to the community. The *munus* component encompasses 'us', making 'us' part of the community, connected with others. In *im-munitas*, the negation of *munus* is an important element in the biopolitical conceptual argumentation. In this line, *immunitas* is an intrinsic mechanism of reproduction of the political body relying on political categories that tend to turn against themselves.

The development of this concept facilitates the understanding of the fragile equilibrium between the protection of ‘our life’ as our community-body and the danger that comes from the ‘others/illness/outsideers’, which must be controlled. *Immunitas* is the absence of the obligation towards ‘others’. Someone who is *immune* is therefore exempt from any obligation to the community. This theoretical development is key to the interpretation of EU migration policies because it serves to explain the absence of assumptions of political responsibility of the deaths and violence against migrants at EU’s borders. According to Esposito (2008), the *immunity* mechanism is the main feature of modern Western politics, where the relationship between protection and negation of life is held in a fragile equilibrium.

Ultimately, Esposito’s conceptual development shows that the EU’s assumption that it has no obligation towards ‘others/migrants’ unveils the racist understanding that migrants do not belong to the community, but are a kind of ‘disease’ to be neutralised. Thus, using *immunitas* as a theoretical tool serves to facilitate a radical interpretation of the contradiction identified in EU migration policies between the protection of life and the production of death. It also highlights the fact that human rights protection legitimises migrants’ repression at EU borders and in third countries, following colonial logics (Lo Coco, 2021, p. 72-73).

Further, to show the inherent contradiction found in the EU’s migration policy between the protection of life and the production of death, the paper analysed the principal EU policy documents on migration from the European Commission, paying attention to the inclusion of human rights protection in European policies within a process of externalisation. This analysis shows how protection was progressively included in EU policy documents during the process of integration and framed by an international scenario of widespread human rights protection of (Lo Coco, 2021, p. 62). In 2010, human rights were included as a transversal element in EU foreign policy. Based on the study of the Global Approach to Migration (GAM) (European Commission, 2005), Global Approach to Migration and Mobility (GAMM) (European Commission, 2011), the Agenda for Migration (EAM) (European Commission, 2015) and the Pact on Migration and Asylum (European Commission, 2020), it is clear that there has been a strengthening of the externalisation of EU migration policy, where cooperation with third countries for the implementation of both protection and control measures is at the core of migration management actions.

In order to illustrate the inclusion and the externalisation of protection as a measure of migration control, the paper uses a specific example: the Regional Protection Programmes (RPPs) implemented by the European Commission since 2005 (European Commission, 2005). These programmes shape regional spaces of protection in third countries as a way of guaranteeing the protection of refugees and asylum seekers, in order to reduce the number of unwanted arrivals into Europe. RPPs are a paradigmatic example of European immunity, as they focus on the use of human rights as a legitimising element of repressive measures in third countries. In November 2004, the Council of Europe encouraged ‘the Commission to develop RPPs in partnership with third countries’ in cooperation with UNHCR (European Commission, 2005). RPPs aim ‘to help’ third countries to ‘meet their obligations under the 1951 Geneva Convention’ (Lo Coco, 2021, p. 64) working for the development of a protection framework in third countries. Protection of life is the strongest legitimisation for any measure. Protection serves to legitimise intervention for migration control. The

encouragement for the creation of these spaces of protection has continued until 2005 with the GAM until 2011 with the GAMM. In 2016, the EAM set up the RPP for North Africa for the period 2016-20 covering Morocco, among other areas. These programmes are examples of a metaphoric representation of the EU as a political body that needs to be protected and employs human rights protection as a legitimating instrument to keep itself safe (Lo Coco, 2021, p. 68).

Therefore, in a context of the externalisation of migration control, the concept of *immunitas* serves to underpin the theoretical analysis of externalisation, and particularly to explain the externalisation of protection as a criterion for the legitimisation of power (Lo Coco, 2021, p. 60). Finally, this article argues that *immunitas* is a useful concept to look at migrant deaths, as it points to an inherent characteristic in the relationship between life and politics in modern Western migration governance, which protects certain lives while bringing death to others. It has done so by using RPPs as paradigmatic examples of how human rights can be used to legitimise migration control in third countries within EU migration policy.

The externalisation of protection aims to contribute to the reduction of forced displacement towards Europe by theoretically protecting human rights. In other words, it is part of the EU's measures that are implemented to control unwanted migration before it arrives on European soil. All these measures are a central driver of the EU's policy documents. Thus, protection of human rights, externalisation and cooperation with third countries and the defence of human rights are at the centre of EU migration policy measures. Cooperation with third countries encourages the development of national protection frameworks in parallel to measures of migration control such as detention and deportation.

The European Union's border externalisation policies have driven the creation of frameworks in third countries to protect the rights of migrants, refugees and asylum seekers, as well as other policies on control, detention transfer and deportation. This process can be easily seen in the case of Morocco.

- **The dual logic of European externalisation: protection and deportation in Morocco**

The second article of this dissertation was entitled 'The dual logic of European externalisation: protection and deportation in Morocco' (Lo Coco and González-Hidalgo, 2021), and it examined the case of Morocco. It addresses the deployment of protection frameworks simultaneously with control measures, something that is rarely examined within the studies of externalisation of migration policies. It focuses on the analysis of the dual logic and how it has been crystallised in Morocco, while addressing practices of arbitrary detention in informal centres, forced displacement and the deportation of black people from West and Central Africa between 2019 and 2021. It is based on primary and secondary sources and was conducted in the context of the COVID-19 pandemic.

The externalisation of borders plays an important role in transferring the biopolitical contradiction between the stated goal (the protection of life and its actual consequences) and the production of deaths of third-country nationals/others to third countries (Lemberg-Pedersen, 2015). In this regard, Christina Boswell (2003) argued that there is a double strategy within the EU externalisation process of 'care and control' that involves the development of protection frameworks in third countries and the parallel implementation of deportation systems in third countries. Following Flynn's argument

(2014), the logics of detention and deportation are transferred towards third countries within the externalisation process. Embedded in the externalisation of migration control, the protection/deportation logic has been transferred to third countries, particularly to the Maghreb, through cooperation and political agreements (Lo Coco and González-Hidalgo, 2021).

At this point, it is important to note that Morocco ratified the 1951 Convention relating to the Status of Refugees in 1956 and its 1967 Protocol in 1968. Morocco also ratified the Organisation of African Unity Convention (OAU) governing specific aspects of refugee problems in Africa in 1974.²⁰ In the context of externalisation, Morocco developed protection frameworks for migrants, refugees and asylum seekers, while simultaneously implementing law and practices that have strengthened detention, forced displacement and deportation of migrants. Since 2000, Morocco has carried out a dual logic of protecting and controlling unwanted migration through detention and deportation, thus establishing a strategy of ‘protection/deportation’. In this regard, Law 02-03²¹ was approved in 2003 stipulating the detention, displacement and deportation of irregular migrants. This specific legislation has installed deportation and displacement at the same time that it protects certain categories considered vulnerable such as pregnant women, children, asylum seekers and refugees (Lo Coco and González-Hidalgo, 2021, p. 85). Despite these practices being established by law with procedures and guarantees, deportation and displacement in Morocco are characterised by informality and exception. In addition, the 1992 agreement signed with Spain on return of migrants entered into force in 2012 and enabled deportation of third country migrants from Spain to Morocco. In Morocco, detention, deportation and displacement measures are unlawfully implemented, disregarding national and international legal procedures and human rights.

On the other hand, the development of the protection framework of transit migration in Morocco was driven by the external action of the EU through the reinforcement and implementation of bilateral and multilateral agreements with the EU and its Member States. In this regard, with the launch of the European Neighbourhood Policy²² (ENP) in 2004, reviewed in 2015, Morocco became a privileged partner of the EU in the field of political and economic cooperation as well as trade, technical and development cooperation.²³ The New Action Plan was adopted in 2013 under the ENP. In June 2013 the Mobility UE-Morocco partnership was implemented, including readmission of third country nationals (Khachani, 2020, p. 3). Similarly, the Euro-African Dialogue on Migration and Development (2006), known as the Rabat Process,²⁴ aligned Morocco with European interests on migration. These agreements shaped a scenario of cooperation between the EU, Member States and Morocco, where negotiations resulted in measures for migration care and control.

After the new Constitution was enacted in 2011, the King of Morocco stated the country’s commitment to Human Rights, with the publication of the National Strategy for Immigration and

²⁰OAU Convention governing the specific aspects of refugee problems in Africa:

<https://treaties.un.org/pages/showDetails.aspx?objid=080000028010432f>

²¹ *Dahir n.° 1-03-196 du 16 ramadan 1424, portant promulgation de la loi n.° 02-03 relative à l’entrée et au séjour des étrangers au Royaume du Maroc, à l’émigration et l’immigration irrégulières.* n.° 5162, 20 November 2003:

<https://adala.justice.gov.ma/production/legislation/fr/penal/immigration%20clandestine.htm>

²² European Neighbourhood Policy https://www.ecas.europa.eu/ecas/european-neighbourhood-policy_en#:~:text=The%20ENP%20builds%20on%20the,human%20rights%20and%20social%20cohesion.

²³ https://neighbourhood-enlargement.ec.europa.eu/european-neighbourhood-policy/countries-region/morocco_en

²⁴ See details on the Rabat Process at: <https://www.rabat-process.org/en/>

Asylum in 2013 (SNIA).²⁵ This strategy established the regularisation means for migrants, reinforcing two legislative projects. The projects strengthened the role of UNHCR and the procedures to access international protection (Lo Coco and González-Hidalgo, 2021, p. 87), but they are still pending approval. In practice, despite the work of UNHCR and the regularisation processes in 2015 and 2018, violent practices, especially against black migrants, including women and children (even if they are protected as asylum seekers or refugees), take place in Morocco on a regular basis. The blackness of those individuals appears to be a determinant characteristic in them being identified, detained, displaced and deported. The fieldwork of this dissertation showed that black people are identified, held in informal detention centres and bunkers, and often deported to their countries of origin, or displaced in inhumane conditions (Lo Coco and González-Hidalgo, 2021, p. 89-97). Thus, racialised migrants are exposed to harm, facing death and torture. There is strong evidence and testimonies of the deportation of refugees and vulnerable categories of migrants, including children.

The forced displacement of black migrants occurs in Morocco on a regular basis from borders towards other inland cities. Testimonies have confirmed that informal detainees are exclusively black people, who are held in detention centres and placed in coaches for displacement. Detention centres do not have facilities or conditions to guarantee privacy or liberty, so these migrants are held in centres with no natural light, access to legal assistance or information about international protection. The collaboration of embassies and consulates on the deportation of those individuals is fundamental for their return. Meantime, international organisations like UNHCR or IOM remain silent. Despite the frameworks set forth for protection, rights violations are regularly committed when in the processes of identifying black people, as well as in their detaining, displacement and deportation.

- **Coloniality and racism in the Spanish deportation system: exceptional practices and violence during deportation to Morocco**

The two first articles pointed to the need to consider racism when examining the violence perpetrated against migrants. The initial analysis clearly showed that, in order to understand violation of rights and deaths at borders, race and racism must be placed at the centre. Biopolitical approaches to migration and their main concepts such as exception, inclusive exclusion or bare life are important to understand migration policies (Agamben, 2016, 2019; Foucault, 2000, 2012). Although these concepts are useful for the study of borders, biopolitical approaches have been criticised for failing to consider racism and the colonial history of domination. In fact, proponents of biopolitical approaches to migration have recently been accused of epistemological racism by those who advocate postcolonial perspectives. However, in combination with postcolonial perspectives, they have proved to be highly informative in understanding the Spanish deportation system.

This approach was adopted in the third article, entitled ‘Coloniality and Racism in the Spanish Deportation System: Exceptional Practices and Violence During Deportation to Morocco’. This article contributes to the postcolonial understanding of the Spanish deportation system by focusing on its connections with racism, exception and violence. It does so by relying on Fanon’s anti-colonial ideas, together with Mbembe’s biopolitical developments and the concept of coloniality. It analyses

²⁵ For further information, see ‘Stratégie nationale d’immigration et d’Asile: <https://marocainsdumonde.gov.ma/strategie-nationale-dimmigration-%20et-dasile/>

the deportation system as implemented in Spain and shows that it is a legal form that results in racialised violence, exception and the production of death. The case of Morocco and six direct testimonies of deported nationals are studied in the article. The analysis leads to the conclusion that the deportation system as implemented in Spain is intertwined with coloniality, exception and violence, and often produces the death of racialised groups.

It adopts a postcolonial approach including the colonial history of domination and racism in the analysis of migration. It mainly takes into account Franz Fanon's conceptual developments on racism and violence, together with Mbembe's necropolitics and the idea of coloniality as fundamental theoretical elements to acknowledge racism as an inherent feature of the EU's and Member States' migration policies. This article understands that racist colonial logics have influenced the shaping of present legal frameworks and practices of deportation, contributing to the racialisation of certain groups who are exposed to higher levels of violence and are more likely to die, especially during detention and deportation (Kalir, 2019, p. 20).

The Spanish deportation system is characterised by similar features to those seen in other EU countries. These common features are associated with the reproduction of logics and practices within the colonial management of non-white racialised populations. Deportation is one of the practices anchored in colonial logics and practices. These widespread, institutionalised deportation regimes are a continuation of colonial violent devices used against racialised groups. The Spanish deportation system is in line with the definition of *Departheid* provided by Kalir (2019). *Departheid* in Spain entails violent exclusion and may result in death during detention and deportation. Since Spain's entry into the EU, Spanish law has adopted positions of colonial racism, creating hierarchical categories that contribute to the racialisation of deportable and imprisonable people. Racialisation in Spain determines different levels of access to rights and the exposure to detention, deportation and death.

This article shows how the development of legal provisions and specific practices have contributed to the installation of *Departheid* in Spain, and how the regular occurrence of racialised death during detention and deportation is met with exception and impunity. Spain has significant ties with Morocco, firstly because of the geographical proximity between the two countries and secondly, because of the colonial history of domination. The inclusion of the colonial history of domination in the analysis makes it possible to identify the persistence of features of the protectorate, the absence of law when interacting with unarmed Moroccans, the use of violence and the recurrence of impunity and exception. Spain deports more Moroccan nationals than any other country in the EU. In addition, more Moroccans are deported from Spain than any other nationals. These deportations occur within the context of an ambiguous legal framework.

This paper provides evidence that Spain's deportation system inflicts racial, psychological and physical violence on racialised Moroccans within a context of exceptionality. This means that, despite the existence of relevant laws, exceptionality, the violation of rights, death and violence are regular practices when it comes to racialised groups in detention for the purposes of deportation. Spanish *Departheid* also exhibits particularities such as fast-track deportation practices, characterised by the lack of a clear legal framework, speed, secrecy and exception in order to circumvent the rights of deportees. These testimonies have contributed to providing evidence of the connection between racism, exception, violence and death in Spanish *Departheid*, perpetuating colonial violence.

Testimonies collected in this study show how deportation violently destroys life projects and sometimes families, as it affects not only deportees but also their loved ones. Exception and the violation of rights are extremely difficult to detect and monitor during deportations, particularly when they are secretly enforced in less than 72 hours. Legal safeguards are often not respected, but even if the process is conducted in line with applicable laws and regulations, it regularly entails the use of violent practices. The deportations of these Moroccan nationals illustrate how, when abusive practices are framed within a context of exceptionality, it is usually difficult to prove their existence and to bring those responsible to justice.

5. Conclusions

The simultaneous existence of an extensive framework of migrant protection and the violation of human rights at EU borders is complex and dynamic. This thesis has posed three distinct questions to investigate different aspects of this complex situation. These questions were specifically answered in each of the articles published. However, it is interesting to draw a number of general conclusions in response to the main question before outlining the main findings of each of the articles. Therefore, the general findings that answer the main question of this study are presented below, followed by the core conclusions for each specific question in the ensuing paragraphs.

How can the contradiction between the existence of an extensive framework of migrant protection and the simultaneous violation of human rights, detention, deportation, exception and death of racialised migrants at EU borders be explained?

Borders in the EU have become a space in which the biopolitical contradiction between the protection of life and the production of death exists within a double logic of protection and control. This dual logic takes the form of an overall framework for the protection of human rights, on the one hand, and of the simultaneous development of control mechanisms, mainly detention and deportation, on the other.

Human rights are a fundamental element in the EU. This is reflected in the different treaties and policies that frame the EU's migration policy, both within the European territory and in third countries. However, despite the existence of a widespread and well-established protection framework, human rights violations occur regularly at borders, resulting in thousands of deaths every year. Thus, European migration policies ultimately kill those people that they were supposedly (at least theoretically) intended to protect. In the context of the border, this situation reflects the contradiction between the protection of life and the production of death.

The development of biopolitical studies has contributed to accounting for this contradiction, which is inherent to current EU migration policies, by offering a theoretical structure capable of explaining the simultaneous presence of the elements of protection and control. These perspectives have applied fundamental concepts such as that of permanent exception, bare life and *immunitas*. Specifically, the concept of *immunitas*, coined by Roberto Esposito, helps to comprehend this dual logic, as it is a useful theoretical tool for understanding the deaths and constant violation of human rights at borders framed by human rights protection policies. Esposito argues that the protection of life necessarily

involves the production of death for those who are not part of the community, in other words, ‘the others’.

Although biopolitical perspectives are essential for gaining an understanding of the contradiction between the protection of life and the production of death at borders, biopolitical approaches have been criticised for failing to take into account racism and the colonial history of domination. Coloniality and racism are key elements in the explanation of the exceptionality and impunity found in migration control and, in particular, in the practices of detention and deportation at EU borders. Postcolonial perspectives, in combination with biopolitical ones, point to the links between racism, the death of racialised groups and practices of exception. Furthermore, including the history of colonial domination in the analysis makes it possible to identify the elements of continuity that exist within colonial logics, showing that coloniality underlies exceptional practices for the control of racialised populations.

The externalisation of borders in third countries has prompted the simultaneous development of migration control mechanisms (such as detention and deportation) in parallel to the development of frameworks for the protection of migrants, refugees and asylum seekers. In other words, third countries have absorbed the dual protection/control logic by reproducing life-protecting and death-producing mechanisms. This means that racialised people and migrants who cross EU borders rather than being protected, are exposed to detention and deportation and to practices of exception. That is to say, migration control is generally conducted by perpetrating human rights violations on a regular basis during detention and deportation. This process is taking place along the borders of the EU and, in particular, at the Spanish-Moroccan border.

Morocco has absorbed the protection/control logic and has become a space for the reproduction of a biopolitical contradiction in which spaces of serious human rights violations occur within the framework of rights protection legislation. Despite the legal framework of human rights protection, detentions and deportations take place outside the legal boundaries established in the applicable framework, in a state of exceptionality. Moreover, these rights violations during detention and deportation mostly affect black migrants, exposing them to death.

Similarly, the Spanish case reflects the use of migration control to reproduce the colonial logics and practices applied to racialised populations. As a Member State of the EU, Spain is part of a broad framework of rights protection. However, in Spain, detention and deportation of racialised groups entails violent exclusion and may result in death. Furthermore, Spanish deportation procedures reflect a widespread, institutionalised system that continues the colonial violent devices used against racialised groups, and especially against Moroccans. The Spanish deportation system is in line with the definition of *Departheid*, which includes racism in the understanding of this mechanism.

Finally, migration policies racialise certain populations coming from countries with a history of colonial domination, exposing them to exceptional and violent practices during detention and deportation, despite the existence of a protective framework. The racialisation of these groups is a determining factor in their being subjected to exceptional practices during border control and is therefore also a determining factor in the violation of their rights and even in causing their death.

Using a biopolitical analysis, this study highlights the embryonic relationship between migration policies, racism and the history of colonial domination, and the exceptionality that accompanies migration control practices, particularly in the practices of detention and deportation on the Spanish-Moroccan border.

The following paragraphs summarise the main findings connected with the specific questions.

(1.1) How can the relationship between the generalised use of human rights' protection in the external dimension of the EU's migration policy, and the violations of migrants' human rights and production of deaths (of others) at EU borders be explained?

The application of biopolitics to migration studies has generated two theoretical strands, based on their interpretation of the relationship between the protection of life and the production of death. There is a positive strand that privileges life and migrant agency over death, and a second interpretation that gives priority to the totalising negative reading of Agamben, known as *thanatopolitics*. Neither of these schools of thought have succeeded in producing a consistent explanation of the relationship between the two consequences of approaching migration from a biopolitical paradigm. However, Roberto Esposito coined the concept of *immunitas* as a theoretical solution to the dichotomy that articulated the two possible theoretical drifts of biopolitics. The concept of *immunitas* allows a radical look at borders and migration, where *immunitas* is the main constitutive element of modern Western politics and presents the immunity-based negation of life as the logical consequence of the protection of life.

The study of human rights as an immunity-based legitimising element is a useful and radical tool for the interpretation of migration policies. It can therefore be argued that, despite the EU's protection framework and the constant presence of human rights elements within migration policy, migrant deaths occur daily at EU borders. The analysis of the main EU policy documents suggests that this biopolitical contradiction is embedded in the EU's migration policy. At the same time, this contradiction is externalised to third countries, which reproduce similar logics of protection of life and control which ultimately produces the death of those that they initially claim to protect.

This dissertation suggests that the biopolitical contradiction does not only exist, but is inherent to EU current migration policy. Thus, the application of the concept of *immunitas* to the study of migration is essential in order to approach the use of human rights' protection within EU migration policy as an instrument for the legitimisation of power. Esposito facilitates an approach that perceives migration politics as an environment for the re-production of a biopolitical tendency of protecting life while delivering death to certain bodies. Moreover, Esposito's concept helps to unveil the EU's assumption that it has no obligation towards the 'others' and discloses a racist notion that migrants do not belong to the community.

As a consequence, the EU's generalisation of human rights protection does exactly the opposite to what it claims: its effect is that it negates (certain) lives. This study highlights the metaphorical self-understanding of Europe, which serves to blur the underpinning logics of governance, coloniality and racism. Thus, using *immunitas* as a theoretical tool serves to facilitate a radical interpretation of the contradiction found in EU migration policies between the protection of life and the production

of death. It also stresses the fact that human rights' protection legitimises migrants' repression at EU borders and third countries, in a way that follows colonial logics. Last, *immunitas* is a useful concept to look at migrant deaths as a consequence of a characteristic that is inherent in the relationship between life and politics in modern Western migration governance, which protects certain lives while bringing death to others.

Having both established the biopolitical theoretical framework and analysed the EU documents used for the externalisation of migration control through the protection of rights as a control mechanism, the thesis transfers this framework to the analysis of the so-called third countries. Specifically, it studies Morocco to analyse how the protection/control inherent in European migration policies is reproduced in third countries.

(1.2) To what extent does the EU's externalisation of migration control reproduce the contradiction between human rights protection and control of migrants in third countries?

This article analyses the case of Morocco as an example of how the contradiction between protection and control is manifested at EU borders. It therefore studies how the protection/control logic is used in the context of outsourcing migration control to third countries. In particular, it analyses the simultaneous development of control and protection, both at the level of migration policies and of current practices, especially those related to the violation of the human rights of racialised groups during detention and deportation in Morocco.

In this framework of analysis, Morocco has incorporated the dual logic of 'protection-deportation/control' into its national laws, mainly through Law 02-03 and the SNIA strategy. However, the deportation/control part has been implemented with greater force through a strict form of migration control that materialises into police raids, arrests, detentions and the use of the 'protection' and 'deportation' strategies. This includes engaging in detention, forced displacement and unlawful deportation of migrants in an irregular situation and, on several occasions, of persons with refugee status or in the process of applying for asylum. Thus, stepping outside of the legal boundaries.

Despite the existence of protection frameworks, the existing rhetoric of rights, detention and deportation have become tools of migration control, mainly against racialised migrants (black migrants). In order to carry this out, unofficial, abandoned buildings, underground police stations or schools are used to detain people who will eventually be illegally displaced or deported. Detention centres are often illegally managed and are not suitably equipped. Their conditions are frequently unhealthy and unsanitary, and physical and psychological torture takes place in them, as detainees are left in the dark and without ventilation for the duration of their stay. In these conditions, it is impossible to access international protection or any kind of legal assistance.

Again, despite the fact that human rights associations and activists have denounced the existence of these centres and the practices that take place within them, UNHCR does not visit them or mention them in its reports. On the contrary, the consulates involved do visit them in order to identify their nationals and, subsequently, issue *laissez-passers* to grant safe conducts and proceed with deportations. This study has noted that asylum seekers have been deported from Morocco after being identified by

their consulates, in violation of the right to international protection and asylum. The study has also reported the existence of cases of chain deportations from Spain; once in Morocco, these persons are again deported from detention centres to their countries of origin.

Therefore, the EU control and protection logic is extended to third countries through processes of externalisation of migration policies. As part of the externalisation mechanisms, protection frameworks are developed in third countries appear in parallel to the detention and deportation mechanisms affecting racialised groups. Despite the existence of a legal framework for detentions and deportations, they are carried out on racialised migrants outside the established legal boundaries, acting with exception and impunity, and in violation of human rights.

Finally, the Spanish-Moroccan border is presented as a paradigmatic example of EU borders, as a space in which these dual logics are reproduced through a structure permeated by coloniality and therefore, racism. Moreover, this analysis suggests that the central place given to this control/protection logic is probably found in other EU geographical borders, and that they reproduce similar practices of racialisation, exception and human rights violations.

(1.3) What are the connections between colonial history, racism, exception and violence when it comes to border control?

Post-colonial approaches have contributed to the inclusion of the colonial history of domination and racism in the analysis of migration. Franz Fanon's conceptual developments on racism and violence, together with Mbembe's *necropolitics* and with the notion of 'coloniality', are vital to acknowledge that racism is an inherent feature in the EU's and Member States' migration policies. These perspectives have shown that (i) racist colonial logics have shaped current legal frameworks and deportation practices, contributing to the racialisation of certain groups; and that (ii) there is a structural mistreatment of some migrant population groups, who are exposed to higher levels of violence and are more likely to die, especially during detention and deportation.

The features of the Spanish deportation system are similar to those identified in other EU countries. These common features are associated with the reproduction of logics and practices for the colonial management of non-white racialised populations. Deportation is one of these practices and is anchored in colonial logics and practices. These widespread institutionalised deportation regimes are a continuation of colonial violent devices used against racialised groups.

Moreover, the Spanish deportation system is in line with the definition of *Deporttheid*, which in Spain entails violent exclusion and may result in death during detention and deportation. Since Spain's entry into the EU, Spanish law has embraced colonial racism, creating hierarchical categories that contribute to the racialisation of deportable and imprisonable people. Racialisation in Spain determines different levels of access to rights and exposure to detention, deportation and death. The development of some laws and practices have contributed to the installation of *Deporttheid* in Spain. It has been shown that there is a regular occurrence of racialised death during detention and deportation, acting with exception and impunity.

The inclusion of the colonial history of domination in the analysis makes it possible to identify the persistence of features of the protectorate, the absence of law when interacting with unarmed

Moroccans, the use of violence and the recurrence of impunity and exception. Spain deports more Moroccan nationals than any other country in the EU. In addition, more Moroccans are deported from Spain than any other nationals. These deportations occur in an ambiguous legal framework.

Spain's deportation system inflicts racial, psychological and physical violence on racialised Moroccans within a context of exceptionality. This means that, despite the existence of relevant laws, exceptionality, rights violations, death and violence are regular practices when it comes to racialised groups in detention for the purposes of deportation. Spanish *departheid* also exhibits particularities such as fast-track deportation practices which are characterised by the lack of a clear legal framework, speed, secrecy and a state of exception in order to circumvent the rights of deportees. These testimonies have contributed to providing evidence of the connection between racism, exception, violence and death in Spanish *Departheid*, perpetuating colonial violence.

Finally, deportation violently destroys life projects and sometimes families, as it affects not only deportees but also their loved ones. Exception and the violation of rights are extremely difficult to detect and monitor during deportations, particularly when they are secretly enforced in less than 72 hours. Legal safeguards are often not respected, but even if the process is conducted in line with applicable laws and regulations, it regularly entails the use of violent practices. The deportations of these Moroccan nationals illustrate how abusive practices are framed in a context of exceptionality.

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EU MIGRATION POLICY AND MIGRANT HUMAN RIGHTS: THE PROTECTION AND NEGATION OF LIFE AT EU BORDERS

DANIELA LO COCO¹

Abstract: *This article addresses the contradiction between the generalised use of human rights' protection within EU migration policy and the production of deaths at borders. Through an analysis of the EU's migration policy, this article suggests using Esposito's concept of *immunitas* to bridge inherent contradictions. Protection of life and the production of death are constitutive mechanisms of Western modern politics. This argument implies that human rights and the protection of life metaphorically legitimise the EU's control of migration from third countries, while blurring the underpinning logics of government, coloniality and racism. The article concludes that protection and the negation of (certain) lives are intrinsic to the EU's migration policy.*

Keywords: *Italian theory, immunitas, human rights, EU, migration policy, biopolitics, externalisation*

Summary: 1. INTRODUCTION. 2. BIOPOLITICS AND *IMMUNITAS*. ITALIAN THEORY APPLIED TO THE STUDY OF MIGRATION. 2.1 *MIGRATION POLICY AS AN IMMUNITY MECHANISM: THE PROTECTION OF LIFE AS THE MAIN CRITERION FOR THE LEGITIMATION OF POWER*. 3. HUMAN RIGHTS AND EU'S MIGRATION POLICY: THE SEED FOR IMMUNITY. 3.1. *THE PROTECTION OF LIFE AND PRODUCTION OF DEATH AS CONSTITUTIVE ELEMENTS OF THE EU'S MIGRATION POLICY*. 4. THE EU'S REGIONAL PROTECTION PROGRAMMES: AN EXAMPLE OF *IMMUNITY*. 5. CONCLUSIONS.

1. INTRODUCTION

Human rights' protection is the cornerstone of the European Union's (EU) identity and represents one of the main goals of its external action. Since the beginning of the integration process, the EU has progressively extended the promotion of human rights within Europe and in third countries. In 2009, the Treaty of Lisbon² (EU, 2007) strengthened the EU's commitment to human rights' by placing their protection at the centre of the EU's external action (Gómez Isa, Churruca Muguruza & Wouters, 2018, Churruca, 2019). Following the Joint Communication of the European Commission (EC) and the High Representative of the EU of the European Union for Foreign Affairs and Security Policy entitled 'Human rights and democracy at the heart of EU external action - Towards a more effective approach' (EC 2011), the EU Council (CoEU) adopted a strategic framework on human rights and democracy which shaped the EU's external action on human rights that affected all policy areas.

Migration issues have been included into the EU's external action (Commission of the European Communities, 2002) reinforcing the partnership with the countries of origin and transit as part of a process that has been called 'externalisation' (Lavenex, 2006; Lavenex and Wichmann 2009, Lavenex 2015; Lemberg-Pedersen, 2012; Moreno-lax and Lemberg-Pedersen, 2019). The council held in Tampere in 1999 (EU, 1999) established

the Area of Freedom, Security and Justice (AFSJ), which made it necessary to control the EU's external borders and therefore to develop a common EU migration policy. In 2005 the European Commission adopted the Global Approach to Migration (CoEU 2005), which was modified by the Global Approach to Migration and Mobility (EC 2011b). These two policy documents, together with the European Agenda on Migration (EC 2015) and the new Pact for Migration and Asylum³ (EC 2020), furthered the inclusion of human rights' protection within the control of unwanted migration in non-EU countries (Lemberg-Pedersen, 2015; Moreno-Lax, 2020).

Despite the EU's protection framework and the fact that human rights have permeated migration policy, several NGO reports, migrants and activists have documented the increase of migrant human rights violations and deaths at EU borders.⁴ Detention centres, pushbacks, deportations, deaths, violence against migrants, shipwrecks, camps for stranded people and physical aggressions are daily occurrences. It therefore seems that the EU's migration policy has become progressively more violent and sophisticated, to the extent of affecting migrants' rights (Collyer, 2019). There is a strong inherent contradiction between the generalised use of human rights' protection and the simultaneous use of violence in terms of the 'strategic and systematic component' in EU migration politics and policies (Walters, 2011:150). As the use of violence produces migrants' deaths and human rights abuses, migration policies end up killing the very people that they claim to protect.

³ The New Pact on Migration and Asylum was proposed the 23th September 2020 (EC, 2020). However, it is not agreed upon. The Pact does not represent any rupture in the continuity of the logic of the EU's migration policy; conversely, it intensifies its characteristics: accelerated procedures, externalization, return, increased securitisation, outsourced responsibility and shrinking asylum and solidarity space. I decided not to include it within this paper firstly, because the Pact was proposed while I was writing this article, and second, because it is still under construction. Contemporary negotiations on the New Pact are related to the opposition in some central elements of European southern countries. In particular, the 25th November 2020, Spain, Italy, Malta and Greece sent a letter to the European Commission stating that the Pact constitutes a good start but there is an imbalance in solidarity (RTVE 2020). Besides, in march 2021, Cyprus, Italy, Spain, Greece and Malta issued a joint declaration calling for the EU to guarantee the fair distribution of responsibility among Member States on migration, in which they 'stress the need for the future European Pact on Migration and Asylum to structure real and effective cooperation with the countries of origin and transit'. <https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2021/20210320athens-med5.aspx>

⁴ There is extensive academic literature on border studies. The understanding of borders has evolved from the late 1980s and early 1990s, when the analysis shifted from interpreting borders as territorial fixed lines dividing sovereignties to the idea of bordering as a set of socio-cultural and discursive processes and practices that are no longer solely the remit of political sciences and has become an interdisciplinary field of study. There was a transition from the concept of 'border' to that of 'bordering', which includes a critical reflection on the proliferation of border forms, functions and practices (Brambilla, 2015). After this shift from border to bordering practices, critical border studies were formalised as a distinctive approach in 2012, in response to the growing multiform complexity and disparity in the contemporary bordering practices which are both cognitive and separates 'us' from the 'others' (Parker & Vaughan-Williams, 2012). According to Parker and Vaughan-Williams (2012), Critical Border Studies are a heterogeneous assemblage of thought on the nature and the location of the border. This approach problematises the border by putting it as a site of investigation, re-conceptualising it as a set of performances in multiple lived spaces where 'the border is not everywhere for everyone'. Lately, researchers have theorised a "processual turn" in border studies (Bambrilla, 2020) For the purposes of this paper, I will conceptualise 'borders' from a Critical Border Studies perspective, understanding borders as ubiquitous, multiple and dynamic.

This radical biopolitical contradiction is a fundamental feature of contemporary European migration policies (Vaughan-Williams, 2017b, Foucault, 2006, Esposito, 2006, Esposito, 2005). Externalisation plays an important role in transferring the biopolitical contradiction into third countries between the stated goal (the protection of life) and its actual consequences (the production deaths of third-country nationals'-others-) (Lemberg-Pedersen, 2015). This modern contradiction has successfully penetrated external migration politics and policies, turning migrants into both threats and subjects of protection, who must be both simultaneously controlled and (theoretically) protected (Moreno-lax & Lemberg-Pedersen, 2019). The EU's Regional Protection Programmes (RPP) are a paradigmatic example of the use of human rights' protection as a goal that legitimises covert repressive measures in third countries.

This article addresses the problematic relationship between the generalised use of human rights' protection in the external dimension of the EU's migration policy, and the violations of migrants' human rights and production of deaths of others at EU borders. It relies on a bio-political paradigm typical of *Italian theory*⁵, which particularly looks at migration policy as the place of re-production of a bio-political tendency of protection of life, while at the same time causing death (Campa, 2015). Despite Esposito's highly valuable ideas within migration studies, only a few works have applied his ideas to the analysis of migration policies. As an exception, Vaughan-Williams' analysis on human rights' protection has used Esposito's concepts, which I believe are fundamental to understanding the logic of EU migration policies.

This paper suggests that Esposito's concept of '*immunitas*' is a useful context in the study of migration policies because it provides an opportunity to bridge the contradiction between human rights protection of life and the production of death inherent to EU migration policies. *Immunitas* allows us to overcome the duality born from Foucauldian biopolitical analysis present in contemporary migration studies. This duality, does not allow us to completely understand the nature of the contradiction within EU migration policies. However, the concept of *immunitas* serves to understand the protection of life and the production of death as constitutive elements of modern Western politics, where the negation of life is the logical consequence of the protection of life⁶ (Esposito, 2005). With *immunitas*, Esposito is answering the following question: why does a politics of life tend to reverse into a politics of death? The answer of Esposito's is that the reverse of politics of life is the death of *others* and those deaths serve to preserve the own political body (Esposito, 2012). This means that there is an intrinsic *immunitarian* logic in modern politics that serves to preserve and protect the (own) community. Esposito argues that, 'politics is nothing other than the possibility or the instrument for keeping life alive' (Esposito, 2008, p.46)). But at the same time, politics are not dealing with the preservation

⁵ I would like to deeply thank Leopoldo A. Moscoso and Gerardo Costabile Nicoletta who brought these authors to my attention and helped me to understand them and feel them. I would like to acknowledge, specially, their help, patience, love, time and guidelines which were extremely useful for me not only professionally but personally.

⁶ Esposito takes the example of the genocide in Germany during the Nazi the immunitary principle – already elaborated in his previous works, *Communitas* and *Immunitas* – is taken as the fundamental explanatory paradigm of modernity and of the deadly Nazi machine.

of each single life, but with the power to protect the own political body. The *immunitarian* principle serves to simultaneously read positive power to affirm and preserve (certain) life and the negative power to negate and annihilate (others) life in order to protect the own body (the EU).

This argument is radical, because it implies that migrants' deaths are not only a negative consequence of controlling migration, but an inherent characteristic of modern migration management systems. In addition, *immunitas* serves to understand firstly, the EU's assumption that it does not have any obligations towards others (outside the community); secondly, human rights' protection as a mechanism of reinforcement of power and for the legitimization of migrants' repression (as an *immunitarian* principle typical of western politics); and thirdly, a European metaphor of self-perception that blurs the underpinning logics of governance, coloniality and racism under an *immunitarian* principle of protection.

This paper will first (1) outline the implications of using a bio-political paradigm for studying migration to illustrate the ideas of the so-called *Italian theory*. Second (2), it will exemplify Roberto Esposito's concept of *immunitas* in relation to migration. Third (3), it will analyse the three main EU migration policy documents, namely, the Global Approach to Migration (EC 2005), the Global Approach to Migration and Mobility (EC 2011) and the European Agenda on Migration (EC 2015) in order to show the inherent contradiction found in the EU's migration policy between the protection of life and the production of death. Fourth (4), it will describe the Regional Development and Protection Programme (RDPP) as a paradigmatic example of European *immunity* by focusing on the use of human rights' as a legitimising element of repressive measures in third countries. Finally, the paper will draw some conclusions.

2. BIOPOLITICS AND *IMMUNITAS*. ITALIAN THEORY APPLIED TO THE STUDY OF MIGRATION.

Critical approaches to migration have placed the contradiction between the protection of life and production of death at the centre of academic biopolitical debates on migration. The biopolitical paradigm considers that there is an antagonistic dichotomy between the protection of life and production of death as a constitutive element of western modern politics (Foucault, 2006). This duality has a significant presence in migration politics and policies, which combine human rights' protection with coercive and repressive measures as a way of managing international migration. Migration politics are usually understood through a dichotomy where policies have the potential to both protect life and contain migration, but problematise explaining the relationship between them. A new approach that can integrate both aims is needed that will bridge the gap between policies (protection) and reality (production of death and violation of rights).

The biopolitical paradigm focuses on the relation between governance and population; between people and sovereign power. This paper relies on the so-called *Italian theory* that re-thinks Foucauldian biopolitics by producing useful concepts to critically

approach the study of migration and borders. Italian theory constitutes one of the most successful approaches for a radical analysis of contemporary migration policies. Giorgio Agamben, Toni Negri and Roberto Esposito are key authors in a school of thought that is characterised by an obsession with disentangling the embryonic biopolitical opposition in modern politics between the protection of life and the production of death (Hardt, Negri, 2009, Foucault, 2006, Esposito, 2006, Agamben, 2016, Agamben, 2019). This opposition is strongly featured in the EU's migration policy, where 'irregular' migrants are presented as being both a security threat and threatened lives in need of saving (Vaughan-Williams, 2017b:95). Migration policies and politics have turned borders into complex spaces featured by both, protection of life and production of death. In this context, the biopolitical paradigm is particularly useful for the theoretical understanding of contemporary borders.

Biopolitics, as stated by Michel Foucault, serves to resume the modern transition from the right of sovereignty 'to take life or let live' to the right 'to make life and to let die'. After Foucault, Giorgio Agamben slightly corrected this argument by stating that the relationship between *bios* (political life) and *zoè* (the pure biological fact of living) is not only a modern constitutive feature of western politics but it has also been present in the political sphere to different degrees throughout history. Nonetheless, biopolitics entails an embryonic duality in contemporary politics: the protection of life and the production of death. These two sides have produced two different theoretical understandings. The first is a positive and vitalist drift and the second one is a negative one that prioritises the production of death, known as 'thanatopolitics' (Agamben, 2016) and later, 'necropolitics' (Mbembe, 2011).

When this dichotomy is transferred to the study of migration, 'letting die' means the production of death by failing to act. For example, exposing migrants to potential death; allowing boats to sink; neglecting their health care needs; blocking boats at sea; deportations; pushbacks; *refoulements*; leaving migrants stranded on Greek islands to the extent that they become desperate and commit suicide; and not assisting births in the forests of northern Morocco, to mention a few. On the contrary, making life has to do with human rights and the EU's proposals to protect people in need, the generalised categories of protection, different humanitarian NGOs working at sea and borders, refuge and asylum, among others⁷. Thus, the biopolitical paradigm unifies both possibilities because

⁷ Critical humanitarian studies have addressed how this 'making life' appears to be in permanent opposition to 'making death', or 'humanitarian violence'. They have studied how 'humanitarian interventions could be seen as having replaced just wars' from a biopolitical perspective (Fassin & Pandolfi, 2010:13). These studies have focused mainly on how humanitarianism and military interventions are legitimised through the protection of life but produce the 'least of the evils' (some deaths). Humanitarianism, is approached as an element connected with the protection of life and the production of death, with care and control (Weyzman, 2017:51). Some researchers have looked at the emergence of humanitarian government and to the inclusion of a 'humanitarian reason' in the governance of migration, borders and refugee camps (Agier, 2011:183, Fassin, Dieder, 2016). In order to understand global governmentality, this group of researchers have included in their analysis several biopolitical concepts such as 'bare life', 'inclusive exception' or 'life under a ban' which are typical within the Italian theory. This means that humanitarian studies and Italian theory are connected through biopolitics and its terminology and concepts. In this regard, border controls, refugee

they are two sides of the same logic, which, according to this approach, is one of the main characteristics of modernity. Both sides, *bios* and *thanatos* are the two possible facets of the same logic.

This dichotomy takes centre stage in the contemporary study of migration policies from a biopolitical perspective. A specific group of theorists have attached more weight to the positive reading of biopolitics (Papadopoulos, Stephenson & Tsianos, 2008, Hardt, Negri, 2009, Mezzadra, 2005, Mezzadra, Neilson, 2017), arguing that the power of *bios* is not reducible or governable; life is more powerful than darkness, and resistance is possible. These theories are usually referred to as the Autonomy of Migration (AoM) and are mostly linked to the well-known Italian thinker Toni Negri. They prioritise migrants' agency, subjectivity and the capacity of political contestation and resistance even inside detention centres and refugee camps. This positive reading is a reinterpretation of mobility 'as ontologically prior to any attempts by border security authorities' (Vaughan-Williams, 2017a:8).

In contrast, the negative face of biopolitics is to be found mostly in Agamben's idea of 'bare life' and 'exception' giving primacy to power *over* life (2016, Agamben, 2019). Agamben's interpretation of power is totalising, and this renders resistance and contestation problematic. Within a negative interpretation of migration policy focused on 'thanatopolitics'⁸, migration policies operate as a dehumanising element, exposing migrants to 'irregular status' and to lethal conditions. Refugee camps, detention centres and spaces of exception are at the core of the analysis. These negative and positive developments of biopolitics produce different poles how migration politics and policies is understood. However, neither can escape from the totalising dual argument and fail to provide a clear perspective on borders and migration. *Thanatos* and *bios*, life and death cannot read nuances and therefore they do not serve to understand the simultaneous relationship between protection and production of death at borders today.

Agamben and Negri's biopolitical analysis have been highly useful for a critical understanding of contemporary migration policies and politics. However, it is still necessary to go further into the theoretical analysis in order to include the simultaneous existence of both protection of life and production of death at borders. Border politics generate simultaneous mechanisms of protection and death production. In the following section, I will expose why Esposito's concept of *immunitas* is useful for the critical

camps, asylum process centres are interpreted as spaces of simultaneous control and care in relation with the humanitarian action (Ticktin, 2011, Fassin, Didier, 2012, Calhoun, 2013, Weyzman, 2017). Following this line, William Walters (Walters, 2011) put together security studies, humanitarian studies and border studies theorising the emergence of the "humanitarian border". Academic production on this topic has led to the development of critical biopolitical approaches to the study of borders and its technologies (Cuttitta, 2019, Cuttitta, 2018, Pallister-Wilkins, 2015, VAUGHAN-WILLIAMS, 2009). All those approaches rely on a biopolitical paradigm including biopolitical concepts as developed by the Italian theory. Despite the fact that academic production relies on Italian theory few take into consideration the potentialities coming from the concepts of Esposito's, particularly *immunitas*, when applied to migration studies, protection and human rights (Esposito, 2005).

⁸ Further developed by Achille Mbembe as 'necropolitics' from a decolonial perspective (Mbembe, 2011)

analysis of this dichotomy in order to provide a theoretical foundation for the following sections.

2.1 *Migration policy as an immunity mechanism: the protection of life as the main criterion for the legitimization of power*

Esposito's concept of *immunitas* is essential to understand the problematic relationship between the generalised use of human rights' protection within EU's migration policies and the violations of migrants' human rights and production of deaths at EU borders. The idea of *immunitas* is complex, but it is fundamental to an understanding of contemporary Western politics on migration. It assumes that the biopolitical contradictions typically inherent in modernity have permeated the political language of modernity, including borders and migration policies and politics (Esposito, 2005). In what follows, I will discuss the notion of 'immunity' and outline its theoretical implications in the analysis of migration policies.

It is essential to understand *immunitas* in relation to the concepts of *communitas* and 'biopolitics'. In order to understand Esposito's paradigm,⁹ it is important to recall Foucault's argument that an embryonic contradiction between the politics of life and the politics of death has inevitably emerged in human political history. In order to overcome this dichotomy, Esposito presented the concept of *immunitas* (2005), which represents a theoretical solution to the Foucauldian duality between *bio*-politics and *thanato*-politics. Esposito argues that Foucault was not completely right when pointing at biopolitics as a characteristic of modern politics; in his view, it is not biopolitics that characterises modernity but *immunitas*. Biopolitics, according to Esposito, has existed since ancient times; however, it is *immunitarian* principle that constitutes a fundamental element of modernity. *Immunitas* is, firstly, an intrinsic mechanism of reproduction of the political body and therefore of the community; and secondly, *immunitas* is located at a crossroads between law-rights (legal dimension) and life-bios (biological dimension), drafting two lines of meaning, one juridical and one related to the semantics of biology. *Immunity* has to do with the attempt to protect life and relying on political categories that tend to turn against themselves.

Regarding the juridical meaning, Esposito goes back to the legal notion of the ancient Greek. In *im-munitas*, the prefix 'im' is the negation of *munus*. *Munus* is the duty to give to others, the obligation to prioritise the necessity of others, a gift that must be restored to the community. The idea of *munus* shatters individuality, while shaping communality. *Munus* is the 'absence' that we have in common with the members of the community, it is what constitutes 'us' and makes us part of the community. By using *munus*, Esposito moves away from the concept of membership through possession and transforms it into membership through absence. *Im-munitas* is the absence of an obligation towards 'others'; someone who is immune has no obligation towards others and is exempt

⁹ These ideas are developed in the three books by Roberto Esposito: *Bios. Biopolitics and philosophy*, *Communitas. Origin and destiny of the community* (2006) and *Immunitas* (2005) *The protection and negation of life*.

from any obligations to the community. The negation of *munus* represents a rupture of communal exchange; it disrupts the social community circuit. If we interpret the EU's migration policy as an *immunity* mechanism, the assumption would be that EU institutions consider that they have no obligation to the 'migrant others', because they do not consider those specific migrants to be part of our community, of the own body. The EU has no obligations towards them because they are not 'us'; they are a threat to 'our' community.

As far as the biological dimension of immunity is concerned, it has to do with the idea of gaining protection from danger. Immunity is a simultaneous relationship between the protection and the negation of life, which is in a fragile equilibrium. A body needs to gain immunity from dangerous external elements such as illness and invasions that pose a threat to the reproduction of the community, to the survival of the (political) body. Furthermore, illness needs a living body in order to survive, for if the body dies, illness cannot survive, and the reproduction of life becomes impossible. If a community is in danger, it is necessary to develop *immunity* responses to protect the community-body, to absorb the invasion in order for life to prevail. Politics aims to protect the life of the community and in order to do that, dangers must be neutralised by gaining immunity. The protection of life is the most powerful legitimisation of the production of death, it excludes through inclusion. The protection of life functions as the inclusive *immunitarian* element that serves to legitimise power and the production of certain deaths (Esposito, 2005).

Within this medical metaphor game, it may be easy to envisage healing a body by using the same poison (or virus) that caused the disease: a vaccine or *pharmakon*. Vaccines are made using the same components that are found in a disease; they are inoculated into the body in non-lethal quantity to provoke immunity. However, if the amount is excessive, the body will die. Immunity generates resistance to the external elements that had invaded the community-body, including the illness to the whole. In this regard, the body is victorious when it succeeds in incorporating the poison into itself; the body does not eliminate the poison, it neutralises and includes it into the whole. In the words of Esposito (2005, 2006), nothing reinforces the host body better than an illness that has been dominated and turned against itself. If we interpret EU migration policy as an environment for the reproduction of the *immunity* mechanism, we can recognise that migration is socially constructed as an external threat to the body-community. In order to be neutralised, the illness/threat must be combated by incorporating it in exactly the same way as viruses or bacteria are into vaccines.

The EU's *immunity* mechanisms counteract the perceived threat by including migrants/illness through exclusion. In other words, the EU uses the same political categories that keep the body alive, protecting life to neutralise dangers like a vaccine reproduces life through an antidote. The protection of life legitimises repression, death and power. Fighting illness will always legitimise repressive responses by constructing an external enemy (Esposito, 2005, p. 176). In this respect, the opposition between the generalisation of human rights and increase of migrants' deaths is an example of the *immunity* mechanisms that neutralise the enemy by incorporating it into the political body. The protection of life, of human rights against the external enemy, serve to protect the community from the threat/victim/migrant/other. Migration control policies and human

rights are part of an *immunity* reaction that involves the same violence it intends to neutralise, where the protection of life, particularly as it is materialised in human rights, is the main criterion for the legitimation of power (Esposito, 2005). Immunity is an account of itself, a metaphoric narrative of the self, which gives meaning to the modern order while concealing the underpinning structures of power.

3. HUMAN RIGHTS AND EU'S MIGRATION POLICY: THE SEED FOR IMMUNITY.

In 2002, the UNHCR's Global Consultation on International Protection involved States, including the EU Member States, in the Agenda for Protection. This agenda was intended to develop 'special' or 'multilateral' agreements to ensure improved burden sharing, with countries in the North and South working together to find durable solutions for refugees. This included 'comprehensive plans of action to deal with mass outflows, and agreements on "secondary movements", whereby the roles and responsibilities of the countries of origin, transit, and potential destination are better defined' (UNHCR, 2002: 6). The UNHCR Programme of Action called on States 'to examine the root causes of refugee movements, particularly armed conflict, and to devote greater resources, both human and financial, in developing respect for human rights' (UNHCR, 2002: 11). The EU internalised this international generalisation of protection as a means of migration management

The EU had already placed human rights' protection at the cornerstone of its external action within the Treaty of Maastricht¹⁰ (TEU) (EU, 1992). Article J-1 of Title V, Provisions on a Common Foreign and Security Policy, established that one of the objectives of the common foreign and security policy was to 'consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms'. In addition, Article 21 TEU¹¹ provides that 'the Union shall seek to develop relations and build partnerships with third countries' pursuing 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law' (EU, 2012). The EU's protection framework for the external action culminated with the Treaty of Lisbon in 2009, which made human rights a must in its relationships with third countries.

The protection of human rights is a key element to the construction of the Area of Freedom Security, and Justice (AFSJ) established in the EU Council held in Tampere (EU, 1999). The construction of the AFSJ strengthened the incorporation of migration issues into foreign policies, connecting internal and external action. At that point, the Union needed to 'develop common policies on asylum and immigration while taking into account a consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes' (EU, 1999, paragraph 3). Following an immunitarian logic, the idea of controlling who comes from outside in order to protect the inside (the community) is the backbone of EU migration control beyond borders. In this equation, partnership between Member States and third countries

¹⁰ Entered into force 1 November 1993

¹¹ In its consolidated version of 2012

is fundamental to govern migration. Thus, the EU seeks to combine policies targeting poverty and conflict prevention and to strengthen democratic states by ensuring respect for human rights (EU, 1999, paragraph 11). The Union is ‘fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, able to respond to humanitarian needs on the basis of solidarity’, and this requires offering ‘guarantees to those who seek protection’ (EU, 1999, paragraph 3 and 4). In this way, third countries might contribute to preventing people from migrating to the EU; this would help the EU to contain threats coming from outside. This process blurs the threshold between ‘in and out’, while transferring European interests onto non-EU countries by following colonial logics.

In 2002, the conclusions from the Seville European Council reinforced the external dimension of migration policy through cooperation ‘with the countries of origin and transit’ (Council of the EU, 2002, paragraph 27). The Council emphasised that protection should be included in its external relations with third countries on migration issues, thus intensifying the ‘root causes approach’ (Balzaq, 2008). One year later, the Thessaloniki European Council (CoEU, 2003) reaffirmed the combination of human rights’ protection, external action and migration control. In particular, the Presidency Conclusions highlighted the importance of participation in the relevant international human rights instruments,¹² while reiterating the need for cooperation with non-European countries in managing migration and in the creation of asylum systems, with specific reference being made to access to effective protection. The European Parliament resolution on asylum procedure and protection in regions of origin invited the Commission to ‘examine ways and means to enhance the protection capacity in regions of origin with a view to presenting to the Council, before June 2004, a comprehensive report suggesting measures to be taken, including legal implications’ (European Parliament, 2005, p. 228). The Thessaloniki Council put on the table the idea of ‘delivering protection’ to third countries as a way of governing migration, following the line of the UNHCR Agenda for Protection (UNHCR, 2002).

3.1. The protection of life and production of death as constitutive elements of the EU’s migration policy

Three main policy documents form the basis for the structure of the EU’s migration policy: The Global Approach to Migration (GAM) in 2005, the Global Approach to Migration and Mobility (EC, 2011b) and the European Agenda on Migration (EC, 2015). All three were launched after a violent and depoliticised event that was aimed to ‘respond to the challenges of migration’ (CoEU, 2005, p. 3) and to create strategic ‘strong links and alignment between relevant EU policy areas and between the external and internal dimensions of those policies’ (EC 2011b, p. 3). The EU’s migration policy has been ‘reactive’ over time; this means that policy documents are generally produced as an institutional reaction to dramatic events such as shipwrecks, murders, mass arrivals, wounded migrants, tortures or migrants’ deaths. These events serve as ‘accelerating pills’

¹² Conclusion 19 from Thessaloniki mentioned Conventions on Human Rights, including the Geneva Convention of 28 July 1951 relating to the status of refugees as amended by the New York Protocol of 31 January 1967, among others.

for the EU's political action in shaping public opinion (Castles, 2004). In this sense, life and death appear indubitably entwined in *immunity* terms within the process of EU migration policy construction.

The external dimension of EU migration policy has been characterised by the generalised introduction of human rights' protection over time. However, an intrinsic contradiction stems from the violation of migrants' rights and the production of death at the EU's borders. There is a seamless link between the how EU migration policy has fared in terms of protection over time and the production of death at EU borders. In 1988, the Spanish newspaper *El País* (Narvaez, 1988) published an account of the first death in the western Mediterranean. It was about a Moroccan migrant and eighteen other people who had disappeared while attempting to reach the Spanish coast. One year later, the first fences were built between the North African Spanish towns of Ceuta and Melilla and Moroccan territory. The erection of the fences provoked incidents in the Moroccan neighbouring areas, and in 2005 at least five people were killed by direct shots (Abad and Rodriguez, 2005) as they attempted to enter Ceuta. Responsibility for this has still not been allocated either by the Spanish or the Moroccan authorities (Medicins sans Frontiers, 2005). In parallel, the situation in Lampedusa in the central Mediterranean route was also a matter of concern for both the European Parliament (2005b) and for the UNHCR (2005). The high number of arrivals, together with the living conditions at the local facilities and the collective expulsions to Libya, were clearly in violation of migrants' rights at the time. As a reaction of those events, the Commission launched the GAM¹³ in December 2005, targeting the European Mediterranean region.

The GAM mentioned the need to 'help' third countries to 'meet their obligations under the 1951 Geneva Convention and other relevant international instruments on international protection, fighting illegal migration, trafficking in human beings' (CoEU, 2005). In this way, migrant human rights' protection was presented to be part of a European goal to be achieved by third countries with the 'help' of the EU. The Union would contribute to the 'capacity building' of those other countries of origin and transit that were not able to protect migrants and asylum seekers by themselves. 'The EU will strengthen its dialogue and cooperation with all those countries on migration issues, including return management, in a spirit of partnership and having regard to the circumstances of each country concerned' (CoEU, 2005, p. 3). Through the GAM, the European Council recognised the importance of tackling the root causes and human rights as part of a 'long-term process to respond to the opportunities and challenges of migration'. The GAM specifically mentioned, 'the creation of livelihood opportunities and the eradication of poverty in countries and regions of origin, the opening of markets and promotion of economic growth, good governance and the protection of human rights'

¹³ A Global Approach to Migration was adopted by the European Council in 2005 and confirmed by the 2006 Council. 'The Global Approach aims to formulate comprehensive and coherent policies that address the broad range of migration-related issues, bringing together different policy areas'. 'The Global Approach has a strong theme of working in partnership with countries of origin and transit: its key concepts are partnership, solidarity and shared responsibility' MEMO/07/549 Brussels, 5 December 2007, Global Approach to Migration. https://ec.europa.eu/commission/presscorner/detail/en/MEMO_07_549

(CoEU, 2005, p. 3). In this way, the GAM reinforced the incorporation of protection into the EU external action regarding migration in the Mediterranean region.

While the GAM constantly referred to human rights' protection and capacity building in third countries, migrant deaths occurred at EU borders. After the release of the GAM, more than 31,678 people arrived in the Canary Islands in 515 *dinghies*¹⁴ (generally known as *pateras* or *cayucos* in Spanish), and around 6,000 died in the attempt during the so-called '*cayucos crisis*' in 2006¹⁵ (International Peace Institute 2016). The *immunity* contradiction stems from a radical dichotomy: protection of human rights was simultaneous to the production of death at EU borders. The development of EU's migration policies over time has gone hand in hand with both the introduction of protection in foreign policy and the use of violent practices at EU borders. In 2008 the European Directive on Return often referred to as the Returns Directives (CoEU, 2008) was adopted, which allowed for the deportation and detention of migrants in specific centres to become established in all EU Member States. Deaths and violations of rights were also reproduced within internal borders. In 2007, Osamuyi Akpitaye was suffocated to death during the assisted deportation flight from Spain to Nigeria, after his guards duct-taped his mouth (Duva, 2007). As a result of the same repressive and violent logic, Samba Martín¹⁶ died in 2011 while detained in the Madrid detention centre in Aluche with no medical assistance. Alik Manukyan (Rodriguez, 2013) and Idrissa Diallo (European Parliament, 2012) died in the Zona Franca migrants' detention centre in Barcelona in unclear circumstances.

In parallel, the extension of protection continued with the creation of the European Asylum Support Office (EASO) in 2010. The EASO was created in order to 'help Member States fulfil their European and international obligations to give protection to people in need' (EU, 2010). One year later, in 2011 FRONTEX extended its agency's mandate¹⁷ while simultaneously introducing obligations related to fundamental rights (Meissner, 2017). The Union consolidated the expansion of human rights' protection onto migration policy, multiplying both internal and external borders and spreading the violation of migrant rights and migrant deaths (Orgaz Alonso, 2018, p. 238)

¹⁴ Small boats.

¹⁵ 'Cayucos' refers to the fisher wooden boats typical from Senegal that were used to travel from Senegal to Canary Islands during 2005 and 2006. In 2005, 4,718 people reached the Canary Islands, in 2006 the number jumped to 31,859. Almost half (16,237) came from Senegal, while other major countries of origin included Gambia (3,633), Morocco (3,423), Côte d'Ivoire (1,698), Guinea-Bissau (1,448), and Mauritania (1,237) (International Peace Institute 2016).

¹⁶ Only in November 2020 (almost 10 years later) did Spain recognise its responsibility in Samba's death. <https://www.elsaltodiario.com/cie/el-estado-espanol-admite-su-responsabilidad-en-la-muerte-de-samba-martine>

¹⁷ Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The point number 9 establishes that 'The mandate of the Agency should therefore be revised in order to strengthen in particular its operational capabilities while ensuring that all measures taken are proportionate to the objectives pursued, are effective and fully respect fundamental rights and the rights of refugees and asylum seekers, including in particular the prohibition of refoulement'. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R1168&from=EN>

The Arab Springs and the beginning of the war in Syria caused thousands of displaced people to arrive at European borders seeking refuge. Again, the EU reacted by releasing another policy document known as the GAMM (EC, 2011b), which elevated migrants' human rights protection. The new GAMM (EC, 2011b) served to update the 2005 GAM to the new migration situation¹⁸ of displacement and border crossing provoked by the Arab Springs in the Mediterranean region. With the new approach to migration, human rights' protection gained a central role. The provisions referred to the need for a 'more strategic and more efficient, with stronger links and alignment between relevant EU policy areas and between the external and internal dimensions of those policies' (EU, 2011b, p. 3). Having placed the protection of migrants' rights at the very core of the policy, the GAMM was structured around four thematic priorities crosscut by human rights: (1) legal migration and mobility; (2) the fight against irregular migration; (3) the promotion of international protection and the enhancement of the external dimension of asylum policy; and (4) the migration-development nexus (EC, 2011b).

Again, the GAMM extended available protection through the inclusion of human rights in the strategy towards third countries, and by multiplying the categories eligible for protection. The GAMM protected not only refugees and asylum seekers, but also other vulnerable groups such as displaced victims and vulnerable migrants, including non-accompanied children, stranded migrants, forced displaced people, victims of trafficking or migrants, regardless of their legal status (Zetter 2014). However, more than 1,500 people drowned or went missing while attempting to cross the Mediterranean that year. The year 2011 was one of the deadliest years for the Mediterranean region until then, according to the UNHCR. The GAMM exemplified how human rights' protection could be extended to other categories, and showed how the modern *immunity* language of the protection of life and production of death permeates the EU's migration policy.

The GAMM included as the transversal role of human rights in foreign policy, specifying that 'the dialogue and cooperation with partners should strive to protect the human rights of all migrants throughout their migration process'.

'The human rights of migrants are a cross-cutting dimension, of relevance to all four pillars in the GAMM. Special attention should be paid to protecting and empowering vulnerable migrants, such as unaccompanied minors, asylum-seekers, stateless persons and victims of trafficking. This is also often a priority for migrant source countries. Respect for the Charter of Fundamental Rights of the EU is a key component of EU policies on migration. The impact on fundamental rights of initiatives taken in the context of the GAMM must be thoroughly assessed'.

(EC, 2011b, p. 16).

Potential actions targeting migration issues at the place of origin and during transit should include elements of prevention and prosecution of 'human rights violations

¹⁸ See the UNHCR's update of June 2011 as an example of the numbers of displaced people in as a consequence of the Arab Spring: <https://www.unhcr.org/4df9cde49.html>

committed against migrants’ and ‘measures should be taken to ensure decent living conditions for migrants in reception centres and to avoid arbitrary or indefinite detention’ (EU, 2011, p. 16). Despite the continuous references made in GAMM to human rights’ protection, political turmoil and violence within North African countries during and after the Arab Springs severely increased human rights violations and migrants’ deaths at EU borders. Since early 2013, the Egyptian police have reportedly detained more than 6,800 persons fleeing Syria (Kingsley, 2014) and it was reported that ‘Egyptian soldiers fired on smuggling vessels heading for Europe ... packed with Palestinians fleeing the destruction in Gaza wrought by Israeli bombing’ (Grange, Flynn, 2014). Lastly, in February 2014 at least 14 people died after the Spanish Guardia Civil shot tear gas at migrants in the water as they attempted to reach Ceuta by sea. One disappeared, and 23 were *refouled* to Morocco without any legal procedures being followed.¹⁹ Again, no one was held responsible, and death was present at EU borders.

In 2015, a shipwreck in which at least 800 people died only 110 km away from the Italian coasts (The Guardian, 2015) was presented again as an inevitable tragedy void of any political responsibility. EU institutions again portrayed themselves as being responsible for the protection of those migrants who risked their lives in the Mediterranean. The European Council released a special statement on 23 April 2015 aimed at preventing the loss of lives at sea and to tackle the root causes of the human emergency in cooperation with the countries of origin and transit.²⁰ The commission issued the European Agenda on Migration (EC, 2015) which provided that the immediate imperative was ‘the duty to protect those in need’. A significant section of the document was devoted to ‘Europe’s duty to protect’.

The European Agenda on Migration identified ‘four pillars to manage migration better’, gearing efforts across the four pillars towards containing unauthorised movement, reinforcing return and readmission, enhancing border controls and ‘support[ing] third countries to develop their own solutions to better manage their borders’. Among the immediate measures to be taken was developing a common approach for granting protection to displaced persons in need of protection (EC, 2015, p. 4).²¹ The EU clearly has a duty to contribute to help ‘displaced persons in clear need of international protection’ always ‘working in partnership with third countries to tackle migration upstream’ (EC, 2015, p. 4).

Despite the general references to and frameworks for human rights’ protection, different NGOs and international bodies have provided evidence of the violation of migrants’ rights at EU borders. Human rights violations are not only committed on land but also at sea through blocking practices by authorities that cause deaths, pushbacks, or

¹⁹ See CEAR, Caso Tarajal <https://www.cear.es/caso-tarajal/>

²⁰ Special meeting of the European Council, 23 April 2015 – statement <https://www.consilium.europa.eu/en/press/press-releases/2015/04/23/special-euco-statement/>

²¹ Categorisation for those that are not in need also involves measures to manage migration. For ‘those not in need of protection’, the EAM pointed to Frontex to help Member States by coordinating the return of irregular migrants’ (EU, 2015, p. 6).

the denial of access to land. Specifically, in 2017 Human Rights Watch reported violation of migrants' rights and pointed at the need for collaboration with Morocco (Human Rights Watch, 2014, 2016). *Refoulements* of black migrants at the southern Spanish border (CEAR, 2015, 2017) are a systematic practice that has been denounced by several local organisations and NGOs,²² as they pose a risk to life through forced displacement, abuses and illegal detentions and deportations (GADEM 2018, 2018b). Amnesty International (2018) also published reports referring to the 'cruel European migration policies' concerning the situation in Libya in 2018. In the same year, and also in Libya, Human rights Watch referred to EU policies as a 'contribution to the abuse of migrants' (Human rights Watch, 2019). Therefore, the incorporation of human rights' protection into external action, and the proliferation of protection categories and vulnerable groups have characterised EU migration policy developments in recent years. However, claiming to protect everyone everywhere can result in protecting nobody nowhere (Moreno-Lax, Lemberg-Pedersen, 2019).

Up to now, the contradiction between the proliferation of human rights protection and the production of migrants' deaths at borders has been identified as constitutive of EU's migration policies. In the following section, Regional Protection Programmes will be used to illustrate an example of how *immunitas* is present within EU's migration policy and how the protection of life serve legitimises the externalization of migration policies.

4. THE EU'S REGIONAL PROTECTION PROGRAMMES: AN EXAMPLE OF IMMUNITY.

Regional Protection Programmes are a paradigmatic example of the use of human rights' protection as a concealed aim to legitimise contention measures in third countries. Protection serves to legitimise intervention, which in terms of Esposito, follows an *immunitarian* logic. Protection beyond borders is presented as a way of migration management, based on the understanding that enhancing areas of protection will contain migration while at the same time protecting life. The protection of life might neutralise threats to the community. These programmes are examples of the metaphoric representation of the EU as a political body that needs to be protected and finds in human rights protection a legitimating element to keep itself safe.

As mentioned above, in 2000 the UNHCR instigated a round of Global Consultations on International Protection in order to 'engage States and other partners in a broad-ranging dialogue on refugee protection'. It aimed 'to explore how best to revitalise the existing international protection regime while ensuring its flexibility to address new problems' (UNHCR, 2002). The Global Consultation process among governments, intergovernmental and non-governmental organisations, and refugee experts gave place to the adoption of the 'Agenda for Protection' (UNHCR, 2002). The Agenda built on the Geneva Convention, which was reflected in the reference to a 'Convention Plus' approach. The 'Convention Plus' reinforced protection through durable solutions for

²² See, for example, Iridia, Prodein, APDHA, Caminando Fronteras, CEAR on pushbacks, deportation, detention conditions, asylum access, abuse, discrimination.

displaced people by implementing return, resettlement and voluntary repatriation or integration.

The UNHCR encouraged States to implement the Geneva Convention of Refugees in order to revitalise the protection framework worldwide, including in the EU Member States. In Europe, the Thessaloniki EU Council conclusions (2004) adhered to the ideas of the Agenda for Protection and specified the need to explore all possible ways of making the entry of people in need of protection ‘orderly and managed’. The conclusions invited the Commission to ‘examine ways and means to enhance the protection capacity of regions of origin with a view to presenting to the Council, before June 2004, a comprehensive report suggesting measures to be taken, including legal implications’:

‘As part of this process, the European Council notes that a number of Member States plan to explore ways of providing better protection for the refugees in their region of origin, in conjunction with the UNHCR. This work will be carried out in full partnership with the countries concerned on the basis of recommendations from the UNHCR’

(CoEU 2003)

In November 2004 (CoEU, 2004) the Council encouraged ‘the Commission to develop EU-Regional Protection Programmes in partnership with the third countries concerned and in close consultation and cooperation with the UNHCR’. Following this, in September 2005, the Commission defined Regional Protection Programmes (RPPs) (EC, 2005) in a communication specifically entitled ‘Regional Protection Programmes’, which would be included in the GAM in December 2005. These programmes were intended to ‘be brought forward with the intention of enhancing the protection capacity of the regions involved and better protecting the refugee population there by providing durable solutions.

These programmes will incorporate a variety of relevant instruments, primarily focused on capacity building, and include a joint resettlement programme for those Member States which may be ready to participate in such a programme on a voluntary basis. With regard to countries of transit, the European Council emphasised the need for intensified cooperation and capacity building, both on the southern and eastern borders of the EU to enable those countries better to manage migration and to provide adequate protection for refugees.

(EC, 2005)

The Final Communication on RPPs (EC, 2005) stipulated two regional priorities for creating regions of protection: western newly independent states and the region of the Great Lakes in sub-Saharan Africa, while it defined other potential areas to be developed in the future such as North Africa, the horn of Africa and Afghanistan. Following this logic of human rights’ protection, the GAM similarly encouraged the creation of Regional Protection Programmes (EC, 2005) in countries of transit and origin. The GAM called on international bodies such as the UNHCR to develop protection capacities in non-EU countries.

‘Regional Protection Programme should be situation specific and protection oriented. It should draw on a range of measures, such as assistance to third countries to comply with international obligations under the Geneva Convention and other relevant international instruments, to enhance protection capacity, better access to registration and local integration and assistance for improving the local infrastructure and migration management. The development and the implementation of these programmes should be taken forward in close cooperation with UNHCR and, where relevant, other international organisations. Possible EU and other funding sources should be indicated. Coherence with the Community approach towards the region and third countries concerned should be assured’

(EC, 2005b, paragraph 3)

In the same *immunity* logic of applying protection from threats that are trying to invade the body, the protection mechanism aims to find sources of risk in order to neutralise them. Measures are then justified and legitimised through the need to provide protection everywhere. The GAMM (EC, 2011b, p. 5) reiterated the importance of RPPs, by re-affirming the idea that ‘the EU should increase cooperation with relevant non-EU countries in order to strengthen their asylum systems and national asylum legislation and to ensure compliance with international standards. Under its third pillar, entitled ‘promoting international protection and enhancing the external dimension of asylum policy’ (EC, 2011b, p. 17), the Member States consider that the EU should support third countries to ensure a ‘higher standard of international protection for asylum-seekers and displaced people who remain in the region of origin of conflicts or persecution’ (EC, 2011b, p. 17). The GAMM specifically mentioned that ‘asylum policy frameworks and protection capacity in non-EU countries must be strengthened’ and that ‘this is to be achieved by means of more extensive cooperation with non-EU countries, inter alia, under Regional Protection Programmes’.

Relying on the a human rights-based approach adopted in previous RPPs, Regional Development and Protection Programmes (RDPP) added a stronger emphasis on development²³ in order ‘to better understand, plan, and mitigate the impact of the forced displacement of Syrian refugees on host communities’.²⁴ RDPPs are a multi-donor European initiative intrinsically linked to human rights’ protection and specifically to the UNHCR’s ‘durable solutions’ (voluntary repatriation, resettlement to third country, and local integration in country of asylum). They were progressively implemented in different regions and led by different Member States. In 2014, the RDPP for the Middle East was led by Denmark as a response to Syrian displacement and ‘to ensure that refugees and host populations ... access their rights’. In 2015, the RDPPs for the North African (NA) region and the Horn of Africa were set up as an important part of the EAM. In 2016, the NA RDPP, led by the Italian Home Office Ministry and funded by the Asylum Migration and Integration Fund (AMIF), was established for the period 2016-2020, covering supporting activities in Algeria, Chad, Egypt, Libya, Mauritania, Morocco, Niger and

²³ For further information, see reports at <https://rdpp-me.org/rdpp-reports>

²⁴ Ibid.

Tunisia on registration, refugee status determination, durable solutions, child protection, direct assistance activities, capacity building and awareness activities.²⁵ The RDPP for the Horn of Africa,²⁶ was led by the Netherlands in order ‘to improve protection and enhance development prospects of refugees, internally displaced people and local communities, aiming to offer an alternative to risks of irregular migration’²⁷ and funded by the EU trust Fund for Africa. With a view to provide long-term solutions, ‘their aim is to assist third countries to address the protection and developmental needs of migrants, refugees and asylum seekers, support the efforts of the migrant and refugee hosting communities, and build capacities of the authorities’.²⁸

Together, RPPs and RDPPs are paradigmatic examples of the use of human rights’ protection as a concealed aim to legitimise intervention on migration issues in third countries. They implement protection as a means of controlling migration, as an *immunity* mechanism for the prevention of migrant threats. Protection of different vulnerable groups, human rights and, in general, enhancing protection legitimises intervention in third countries. The protection of life is the stronger legitimation for any measure. Paradoxically, violence and therefore the production of death at EU borders is everyday more and more common. In addition, RDPPs show the metaphorical self-perception of the EU as a political body that needs to be protected from external threats, and believes that migration is an illness to be cured. Despite the generalised framework of human rights and the proliferation of categories of people in need of protection, there is no evidence of the effectiveness of the protection on migrants’ rights, because protection schemes ultimately kill those it claims to protect, in the approach to life and death that is inherent to modern Western politics. RPP and RDPP serve as paradigmatic examples of how protection and human rights legitimate the intervention in migration issues in third countries.

5. CONCLUSIONS

Biopolitics follows in the wake of the modern transition from the right of sovereignty ‘to take life or let live’ to the right ‘to make life and to let die’. A biopolitical paradigm brings this dichotomy to the centre of the analysis. Foucault’s analysis of the relationship between life and politics focused on the intrinsic relationship between life, death and governance. According to Foucault, biopolitics is the main characteristic of modern politics. Italian philosophers like Giorgio Agamben, Toni Negri or Roberto Esposito have revisited biopolitics from different perspectives, giving place to the so-called *Italian theory*.

²⁵ RDPP NA Fact Sheet https://ec.europa.eu/home-affairs/sites/homeaffairs/files/docs/publications/bls19346_factsheet_general.pdf

²⁶ It refers to Eritrea, Somalia and South Sudan.

²⁷ RDPP for Horn of Africa <https://www.khartoumprocess.net/operations/31-regional-development-protection-programme-rdpp-horn-of-africa>

²⁸ This website was set up during conversations with the manager of the RDPP in North Africa. There was almost no public information about these programmes. In April 2020 the EC created this page to provide further information on Regional Development and Protection Programmes https://ec.europa.eu/home-affairs/news/20200427_regional-development-protection-programmes-north-africa-projects-implementation_en

The *Italian theory* places the biopolitical contradiction at the core of theoretical discussions about migration. This results in two interpretations. A positive one relates to Toni Negri's work and privileges life and migrant agency over death. Researchers following Negri have established a specific way of thinking radically about migration and the Autonomy of Migration. The second interpretation gives priority to the totalising negative reading of Agamben, known as *thanatopolitics*. Neither of these schools of thought have succeeded in producing a consistent explanation of the relationship between the two consequences of approaching migration from a biopolitical paradigm.

Roberto Esposito coined the concept of *immunitas* as a theoretical solution to the dichotomy that articulated the two possible theoretical drifts of biopolitics. The concept of *immunitas* allows to radically look at borders and migration policies and attempts to bridge the gap between the two existing trends in migration studies. Esposito suggests that *immunitas* is the main constitutive element of modern Western politics—and not biopolitics—and presents the *immunity-based* negation of life as the logical consequence of the protection of life.

Despite the vast critical potential of Esposito's theoretical tenets, few researchers have applied his ideas to the study of human rights in migration as an *immunity-based* legitimising element and his theoretical links to the idea of *communitas*. Esposito's philosophy provides useful and radical tools for the interpretation of migration policies.

The biopolitical contradiction is embedded in the EU's migration policy and externalised in relationships to third countries. Despite the EU's protection framework and the constant presence of human rights elements within migration policy, migrant deaths occur daily at EU borders. This article aims to understand the relationship between the protection of life, incorporated into the EU's protection framework and specifically into migration policy, and the production of migrants' deaths at its borders.

Relying on Esposito's philosophy, and on the analysis of three main policy documents and some RDPPs, this article has suggested that this contradiction is not only possible but inherent to EU migration policy. It has also proposed the application of the concept of *immunitas* to the study of migration in order to approach the use of human rights' protection within EU migration policy (GAM; GAMM and EAM) as an element of the legitimisation of power that serves to unlock liberal constraints to control migration in third countries. Esposito facilitates an approach to migration politics as an environment for the re-production of a biopolitical tendency of protecting life while delivering death to certain bodies.

This article has illustrated that the EU's generalisation of human rights' protection has exactly the opposite effect than it claims: the negation of (certain) lives. It highlighted the metaphorical self-understanding of Europe itself that serves to blur the underpinning logics of governance, coloniality and racism. Esposito allows us to look at the EU's assumption of a loss of obligations towards the 'others' as a mechanism that unveils a racist assumption that migrants do not belong to the community, but are a kind of 'disease' to be neutralised. Thus, using *immunitas* as a theoretical tool, serves to facilitate a radical

understanding of the contradiction present in EU migration policies between the protection of life and the production of death and to highlight the fact that human rights' protection legitimises migrants' repression at EU borders and third countries, following colonial logics.

Finally, this article has shown that *immunitas* is a useful concept to look at migrant deaths as a consequence of an inherent characteristic in the relationship between life and politics in modern Western migration governance, which protects certain lives while bringing death to others. It has done so by using RPPs and RDPPs as paradigmatic examples of how human rights can be used to legitimise migration control in third countries within EU migration policy.

The radical potential of the Italian theory and, in particular, the concept of *immunitas*, is useful to understand contemporary migration politics. However, further theoretical research is needed in this area in order to analyse the role that coloniality, gender and race play in the production of death. Italian theory and the concept of *immunitas* are extremely valuable and should be applied to migration studies.

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La doble lógica de la externalización europea: protección y deportación en Marruecos

The dual logic of European externalisation: protection and deportation in Morocco

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Resumen: La externalización de fronteras de la Unión Europea ha impulsado en países terceros la creación simultánea de marcos de protección de derechos de personas migrantes, refugiadas y solicitantes de asilo con políticas de control, además de la transferencia de la detención y la deportación. Este proceso se observa en el desarrollo de las políticas migratorias en Marruecos donde, mientras la Ley 02-03 legaliza la deportación, la nueva Estrategia Nacional de Inmigración y Asilo establece un marco de protección. Así, este artículo examina el caso de Marruecos, en concreto, las prácticas de detención arbitraria en centros no formales, desplazamientos forzados y deportaciones de la población proveniente de África Occidental y Central entre 2019 y 2021, a partir de fuentes primarias y secundarias y en el contexto de la pandemia de la COVID-19.

Palabras clave: Marruecos, Unión Europea, protección, detención, deportación, externalización de fronteras, migración irregular, África Occidental y Central

Abstract: *The European Union's border externalisation policies have driven the simultaneous creation in third countries of frameworks to protect the rights of migrants, refugees and asylum seekers and other policies on control, detention transfer and deportation. This process can be observed in the case of Morocco, where Law 02-03 legalises deportation, while the new National Strategy for Immigration and Asylum establishes a framework for protection. This article examines the case of Morocco and specifically the practices of arbitrary detention in informal centres, forced displacement and the deportation of people from West and Central Africa between 2019 and 2021 based on primary and secondary sources and in the context of the COVID-19 pandemic.*

Key words: Morocco, European Union, protection, detention, deportation, border externalisation, irregular migration, West and Central Africa

Desde los años 2000, la externalización de fronteras se ha convertido en una característica fundamental de la política migratoria de la Unión Europea (UE). El concepto de externalización se conoce también como la dimensión externa de la política de control migratorio o la extraterritorialización (Spijkerboer, 2018). A efectos de este artículo, se recurrirá al término externalización, entendiéndose como la exportación de las políticas europeas sobre migración y control de fronteras a los países de tránsito y origen. En este contexto, la UE ha exportado su política migratoria a terceros países, constituida simultáneamente por medidas de control, detención y deportación, así como por medidas de protección de derechos de personas migrantes, refugiadas y solicitantes de asilo. Esta doble lógica, que ha recibido el nombre de «protección-control», ha impactado –a través de diversos acuerdos políticos y económicos entrelazados y complejos– en la evolución de las políticas migratorias de los países vecinos, principalmente en la ribera sur del Mediterráneo.

Un ejemplo paradigmático es Marruecos, que ha absorbido esta lógica de protección y control. Este país ocupa un lugar importante en la cartera de cooperación en materia de migración de los estados miembros de la UE debido a su condición de país de origen, tránsito y, recientemente, acogida de personas migrantes, principalmente provenientes de África Occidental y Central. En 2019, según Naciones Unidas, aproximadamente tres millones de marroquíes vivían en países de la UE y se estima que un flujo aproximado de 20.000 personas transitan por su territorio anualmente¹ para llegar a la UE; asimismo, Marruecos tenía una población de 13.533 refugiados y solicitantes de asilo en enero de 2021². Esto ha convertido a este país en puerta de entrada de la migración irregular desde África a Europa.

Este artículo examina una cuestión poco estudiada en la literatura sobre migraciones y, en particular, sobre externalización de fronteras: la consolidación de marcos de protección en paralelo con la consolidación de sistemas de detención-deportación en países terceros como medida de gestión de los flujos migratorios. Este análisis es un estudio de caso sobre Marruecos, donde la identificación, la detención arbitraria y el internamiento en centros no formales, desplazamientos forzosos y deportaciones son una constante en la gestión de la migración. En ocasiones, las deportaciones han afectado incluso a personas con estatus de refugiado o en trámites de asilo. Esta desprotección se ha intensificado con la

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1. Para más información, véase: Naciones Unidas, «Monitoring Global Population Trends» <https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp>
 2. Para más información, véase: Alto Comisionado de Naciones Unidas para los Derechos Humanos. «Maroc». Fact Sheet. (enero de 2021) (en línea) <https://reporting.unhcr.org/sites/default/files/UNHCR%20Morocco%20fact%20sheet%20FR%20January%202021.pdf>

pandemia de la COVID-19 a partir de marzo de 2020. Así, en primer lugar, se presenta el marco teórico relativo a la externalización de fronteras a través de una doble estrategia de «protección-deportación»; en segundo lugar, se estudia la evolución de la política migratoria en Marruecos entre 2002 y 2020 con el fin de mostrar cómo las prácticas de detención y deportación se han instaurado en paralelo a los marcos de protección; y, en tercer lugar, se examinan las prácticas de detención arbitraria, los centros de detención no formal, las deportaciones y los desplazamientos forzados de migrantes mayoritariamente provenientes de África Occidental y Central desde 2018 hasta 2021 en Marruecos. En este último apartado se aborda de manera transversal el acceso a la protección internacional durante la detención y la situación provocada por la COVID-19, apoyándose en fuentes secundarias y en el análisis de 16 entrevistas cualitativas realizadas entre noviembre y diciembre de 2020 y enero y agosto de 2021 en las ciudades de Tánger y Rabat. Por último, se presentan unas conclusiones.

Las entrevistas se llevaron a cabo tanto de manera presencial, en las ciudades mencionadas, como por vía telemática. En dichas ciudades existe un fuerte tejido asociativo relacionado con el ámbito migratorio: Rabat es la sede de organismos internacionales relevantes, como el Alto Comisionado de Naciones Unidas para los Refugiados (ACNUR) y la Organización Internacional para las Migraciones (OIM), y aloja organizaciones y asociaciones de personas migrantes; Tánger, por su parte, es clave por su proximidad a la ciudad de Ceuta, por ser una ciudad escenario de operaciones de control migratorio en las últimas décadas, y por la presencia de organizaciones y activistas por los derechos humanos. Por su parte, las entrevistas telemáticas se realizaron a personas y asociaciones ubicadas en Nador, Tin-Tin, Tarfaya, Agadir, El Aiún y Dajla³, dado que en estas ciudades existe un número considerable de personas migrantes en situación irregular. Las entrevistas se realizaron en inglés, francés y castellano a un grupo conformado por los siguientes perfiles: un experto en migraciones de la Universidad Internacional de Rabat, dos activistas por los derechos humanos, seis miembros de organizaciones locales, el representante del Consejo de Migrantes Subsaharianos en Marruecos (CMSM), dos líderes comunitarios⁴ y cuatro personas desplazadas y deportadas⁵. Estos últimos testimonios corresponden a un hombre maliense de 28 años y tres hombres con nacionalidad guineana de entre 20 y 26 años.

3. Desde 2018, las rutas de entrada irregular desde Marruecos hacia España se han concentrado en la zona de El Aiún, Tin-tin, y Tarfaya, en su ruta hacia Canarias (Iridia, 2021).

4. En el momento de la entrevista, uno de los líderes comunitarios desveló que también había sido víctima de desplazamiento interno.

5. Véase el anexo 1 al final del artículo.

Para la realización de esta investigación cabe destacar los obstáculos enfrentados, que han sido determinantes en la concreción de su diseño. Entre ellos encontramos, por un lado, la restricción de la movilidad por la situación de la pandemia de la COVID-19 y, por el otro, el fuerte control gubernamental marroquí que se hizo patente al indagar en cuestiones migratorias y de derechos humanos. A ello se añadió la tensión provocada por el inicio de las hostilidades en el Sáhara Occidental, tras la ruptura en diciembre de 2020 del alto al fuego decretado en 1991. Este contexto repercutió en la seguridad tanto de las investigadoras como de las personas entrevistadas, lo que dificultó el encuentro presencial o la visita a determinados espacios. La cuestión de la seguridad⁶ también influyó en el nulo acceso a determinadas lideresas de organizaciones de derechos humanos, lo que hace que la investigación sea, desde una perspectiva de género, limitada. Otro obstáculo ha sido la escasez de datos oficiales sobre detenciones, deportaciones y desplazamientos forzosos dentro del país y el hecho de que, incluso en los casos en los que existe esta información, esta sea fragmentada y, en ocasiones, contradictoria. Por esta razón, se ha recurrido a informes de organismos internacionales y organizaciones locales, así como a artículos de prensa.

La doble lógica de la externalización: protección de derechos y deportaciones

La protección y las restricciones constituyen una contradicción fundamental que caracteriza la infraestructura global de la movilidad contemporánea de la población (Spijkerboer, 2018). En este sentido, los estudios migratorios y de fronteras⁷ han señalado cómo la violencia y la represión⁸ aparecen dentro de un

6. Entre 2015 y 2021, Marruecos expulsó y denegó la entrada a activistas de derechos humanos, ONG y personal de Naciones Unidas en el Sáhara Occidental.

7. La muerte de migrantes en las fronteras contemporáneas ha sido denominada por algunos investigadores como «espectáculos macabros de muerte» (De Genova, 2018). El número de muertes durante el trayecto migratorio se pueden consultar en el proyecto de la OIM *Missing Migrant Project*, disponible en <https://missingmigrants.iom.int/>

8. Es importante señalar que, estructuralmente, la violencia y las restricciones en la movilidad están dirigidas a personas racializadas y a la «ciudadanía poscolonial». En este sentido, los estudios poscoloniales y decoloniales han incorporado la historia colonial y la raza en el análisis de las migraciones internacionales. Estos presentan el concepto de raza como un producto del racismo colonial, entendiendo la raza como consecuencia de prácticas racistas (Mbembe, 2016: 74). Desde esta pers-

marco de generalización de derechos humanos y de un progresivo uso de un lenguaje humanitario en la gestión de las fronteras (Carling y Hernández-Carretero, 2011; Cuttitta, 2018; Fassin, 2017; Moreno-Lax, 2018; Pallister-Wilkins, 2020; Ticktin, 2016; Vaughan-Williams, 2015). Esta característica puede resumirse en una lógica de control-protección⁹ presente en las políticas migratorias contemporáneas a nivel internacional.

La UE reproduce esta contradicción de control-protección, extendiendo el *locus* del control migratorio más allá de las propias fronteras (López-Sala, 2015; Vaughan-Williams, 2015). La extensión hacia terceros países ha recibido el nombre de externalización de fronteras y se ha convertido en una de las características fundamentales de las políticas migratorias de la UE (Collyer, 2010; Gammeltoft, 2011; Spijkerboer, 2018). Los países africanos y, en particular, la región del Magreb han sido prioritarios en la estrategia de esta externalización (Casas Cortes *et al.*, 2016). El objetivo de llevar más allá de sus fronteras el control migratorio ha empujado a la UE a incluir los asuntos migratorios en su acción exterior, es decir, en sus relaciones con los llamados terceros países y aquellos de tránsito y de origen. La literatura especializada habla de la dimensión externa de los asuntos de interior, dentro de un marco de protección de derechos (Balzacq, 2008; Churrua, 2018; Lavenex y Uçarer, 2004; Lemberg-Pedersen, 2012, 2020; López-Sala, 2015; Zaiotti, 2016). Desde esta perspectiva, Christina Boswell (2003) sostiene la existencia de una doble estrategia de externalización europea que implica, por un lado, el impulso de marcos de protección en terceros países y, por otro, el desarrollo de sistemas de deportación¹⁰ en colaboración con esos mismos países. En este contexto, las deportaciones se han consolidado a través de acuerdos bilaterales o multilaterales de repatriación¹¹ que tienden a ser informales y poco transparentes (Boswell, 2003: 622; Cassarino 2021). Esta doble estrategia de externalización se podría llamar de protección-deportación.

pectiva, se observa que las cifras de personas fallecidas, en las fronteras, están nutridas por personas racializadas (De Genova, 2018).

9. Desde los estudios críticos humanitarios se utiliza los términos «care and control» para referirse a esta lógica, generalmente apoyada en estudios biopolíticos en torno a la excepción (Foucault, 2012).
10. A efectos de este artículo se entenderá deportación como cualquier acto llevado a cabo por parte de los estados que, utilizando los medios que tienen a su alcance, expulsan a personas extranjeras, para así reubicarlas al lugar del cual son nacionales o al país por el cual accedieron al de destino. En el caso específico de Marruecos, nos referimos también a los desplazamientos forzados internos que se producen en el interior del país en autobuses tras la detención. Entendemos que ambas son deportaciones.
11. Para profundizar en el debate terminológico relativo a las deportaciones, retorno y expulsión, consúltese Cassarino (2020a).

La externalización de la protección por parte de la UE se consolida principalmente desde el Consejo Europeo de Tampere (1999) y el Consejo en Sevilla (2002), en cuyas conclusiones¹² se reforzó la dimensión exterior de las políticas migratorias mediante la cooperación con países de «origen y tránsito» (parr. 27). La Comisión Europea subrayaba la necesidad de incluir la protección en sus relaciones exteriores referentes a cuestiones migratorias. Así, progresivamente, la promoción de marcos de protección de derechos en terceros países ligada al control de las migraciones se ha ido reafirmando con la evolución de las políticas de la UE (Balzacq, 2008; Lo Coco, 2021). En este contexto, se impulsan programas de protección más allá de las fronteras europeas y se trabaja a través de las relaciones exteriores para fomentar la adopción y promulgación de marcos de protección de migrantes y refugiados a nivel nacional, regional e internacional.

La UE ha promocionado marcos de protección de derechos en terceros países ligados al control de las migraciones. Sin embargo, paralelamente, las detenciones y las deportaciones se han convertido en una técnica de control rutinaria y definitiva de las migraciones a nivel global.

Sin embargo, paralelamente, las detenciones y las deportaciones se han convertido en una técnica de control rutinaria y definitiva de las migraciones a nivel global. La literatura al respecto sostiene la consolidación de un «régimen global de deportación» e incluso de *departheid* (De Genova y Peutz 2010; De Noronah, 2019; Kalir,

2019). En esta línea, Flynn (2014) señala la transferencia y la difusión de prácticas de detención, retención y expulsión hacia los estados de tránsito de la migración, permitiendo deportaciones previas a la llegada al territorio físico del Estado de destino. En este sentido, algunas investigaciones sugieren la existencia de una relación entre la externalización de fronteras y la exportación de la lógica de detención y deportación a otros estados. La deportación se materializa a través de la proliferación de acuerdos de repatriación a terceros países, ya sea de nacionales o de terceras nacionalidades, diseñando un marco jurídico de las deportaciones desde la UE. Esta tendencia se ha consolidado en la región del Mediterráneo desde hace décadas, intensificándose en los últimos años (De Genova y Peutz, 2010; Lemberg-Pedersen, 2020).

Los acuerdos de repatriación entre estados miembros de la UE y terceros países constituyen un objeto de gran interés para los estudios relacionados con los temas migratorios. Sin embargo, es muy escasa la literatura que analiza cómo

12. Para las conclusiones del Consejo de Tampere (1999), véase: <https://ec.europa.eu/anti-trafficking/eu-policy/tampere-council-conclusions-1999>; y para las conclusiones del Consejo de Sevilla (2002: párr. 27), véase: <https://www.refworld.org/docid/3f4e45154.html>

los terceros países han reproducido esta doble lógica de protección-deportación en un contexto de externalización. En los próximos apartados se analizará cómo Marruecos ha desarrollado políticas de protección y de control de las migraciones no deseadas, poniendo el foco en la consolidación de la detención y la deportación como herramientas de control de las migraciones.

Consolidación de la estrategia «protección-deportación» en Marruecos

Desde inicios de este siglo, el Gobierno marroquí ha adoptado gradualmente un enfoque cercano a la política europea sobre la gestión de la migración. Así, el 11 de noviembre de 2003, el Parlamento marroquí aprobó la Ley 02-03¹³ «relativa a la entrada y la estancia de los extranjeros en el Reino de Marruecos, emigración e inmigración irregulares» (Dahir n.º 1-03-196), entre cuyos objetivos se encuentra cumplir los convenios internacionales referentes a las obligaciones y los derechos de las personas migrantes. No obstante, la ley fue cuestionada por organizaciones defensoras de los derechos humanos, principalmente porque se tipificaba la migración irregular y su asistencia como delitos, además de otorgar más poderes a las fuerzas de seguridad. De igual manera, el Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares de Naciones Unidas señaló que las disposiciones de la Ley 02-03 no eran conformes con las obligaciones internacionales en materia de derechos humanos (Naciones Unidas, 2013: párr. 9).

La Ley 02-03 reglamenta las deportaciones bajo el nombre del «alejamiento» a través de los artículos 21 (reconducción a la frontera) y 25 (expulsión), al mismo tiempo que protege a las mujeres embarazadas y a los niños y niñas (art. 29). En la práctica, tanto las deportaciones como los desplazamientos forzados internos se caracterizan por su informalidad (Khrouz, 2019) y opacidad. A pesar del respaldo jurídico, las organizaciones de derechos humanos denuncian la arbitrariedad en la ejecución de las expulsiones o de las llamadas reconducciones

13. Dahir n.º 1-03-196 du 16 ramadan 1424, portant promulgation de la loi n.º 02-03 relative à l'entrée et au séjour des étrangers au Royaume du Maroc, à l'émigration et l'immigration irrégulières. n.º 5162, 20 de noviembre de 2003. Para consultar la ley, véase: <https://adala.justice.gov.ma/production/legislation/fr/penal/immigration%20clandestine.htm>

a la frontera, por la falta de registro, de notificación y de documentación, que incumplen los procedimientos legales establecidos por la propia ley y desoyen los tratados internacionales de derechos humanos. Esta política de expulsión de la migración irregular se vio reforzada con los acuerdos políticos multilaterales, por ejemplo, con la primera Conferencia Ministerial Euroafricana sobre Migración y Desarrollo, celebrada en Rabat en julio de 2006 (Proceso de Rabat), cuyo objetivo fue el apoyo y la adhesión de los países de origen y de tránsito a la política migratoria europea. El resultado fue la adopción de un Plan de Acción (aún vigente)¹⁴, que centra su atención en la lucha contra la migración irregular, mediante la cooperación para los retornos voluntarios o forzados de las personas que se encuentren en situación irregular al país de origen o de tránsito.

Por otro lado, también se reforzaron e implementaron acuerdos bilaterales entre estados miembros de la UE y Marruecos. Con España, se reactivó el acuerdo de readmisión ya existente de 1992, en vigor desde 2012 (BOE, 1992); de ese modo, se pusieron en marcha deportaciones desde España a Marruecos de ciudadanos de terceros países. Asimismo, se reforzó el Acuerdo de Asociación entre la UE y Marruecos (en vigor desde 2000). A partir de 2008, se concedió al país un «estatuto avanzado» dentro de la Política Europea de Vecindad (PEV)¹⁵. En 2013, se adoptaría un nuevo plan de acción en el marco de la PEV y, en junio de ese año, se implementaría la Asociación de Movilidad UE-Marruecos¹⁶, que incluía la readmisión de nacionales de terceros países –con algunos de los cuales la UE no tenía relaciones– e incluso a los apátridas (Khachani, 2020: 3). Ello ocurría tras finalizar la primera década de este siglo, cuando los levantamientos populares en diversos países de Oriente Medio y Norte de África –la llamada «Primavera Árabe»– provocaron un incremento de la inmigración irregular procedente de esas regiones hacia Europa, lo que reforzó el protagonismo de Marruecos ante la contención y gestión de la migración.

14. Para más información, véase: «Rabat Plan of Action of the Euro-African Ministerial Conference on Migration and Development» (en línea) <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4694a2482&skip=0&query=Rabat%20action%20plan>

15. En 2011, en respuesta a los efectos de la llamada Primavera Árabe, la UE impulsó su apoyo a las transformaciones democráticas en varios países a través de la PEV. En 2015 procedió a una nueva revisión de esta política.

16. Entre sus objetivos destacan: combatir la inmigración irregular; promover una política efectiva de retorno y readmisión apegada al respeto de los derechos fundamentales, así como impulsar el cumplimiento de instrumentos internacionales ratificados relativos a la protección de refugiados. Para más información, véanse: https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/mobility-partnership-facility_en y <https://data.consilium.europa.eu/doc/document/ST-6139-2013-ADD-1-REV-3/en/pdf>.

En este contexto, el Gobierno marroquí inició el proceso de cambio de su legislación interna; por un lado, en 2011, el Parlamento reformó la Constitución, reafirmando el compromiso del Estado con los derechos humanos, además de establecer la primacía de los convenios internacionales sobre el derecho interno; por el otro lado, ideó la Estrategia Nacional de Inmigración y Asilo (SNIA, por sus siglas en francés)¹⁷ que consistió, principalmente, en la regularización por etapas de cerca de 50.000 personas (ACNUR, 2020) y el reforzamiento del papel del ACNUR para continuar los trámites de asilo y la integración social de las personas migrantes y solicitantes de asilo¹⁸. En otras palabras, se estableció un marco de protección de derechos. Asimismo, la SNIA se reforzaría, desde 2015, con dos proyectos de ley: en primer lugar, la Ley 26-14 «relativa al derecho de asilo y a las condiciones de su concesión» (Ministerio de Asuntos Exteriores y Cooperación, 2017: 120); y, en segundo lugar, la Ley 66-17 «sobre asilo y las condiciones para su concesión». Ambas fueron presentadas al Consejo de Gobierno para iniciar su proceso de adopción legislativa (Knoll y Teevan, 2020); sin embargo, a día de hoy, aún no se ha aprobado ninguna ley al respecto ni se han reforzado las instituciones gubernamentales para tal fin (PNPM, 2017), más bien todo lo contrario¹⁹. En añadidura, el Gobierno sigue restringiendo la movilidad de las personas migrantes en situación irregular bajo la Ley 02-03. Según Amnistía Internacional²⁰, desde 2018, las autoridades marroquíes han desplazado a miles de migrantes, refugiados y solicitantes de asilo residentes en las ciudades del norte hacia el sur de país en autobuses, sin recurrir al debido proceso reglamentario, con lo que se refleja la doble política de protección-deportación.

A causa de la COVID-19, este contexto se ha tornado más complicado: el 23 de marzo de 2020, se declaró el estado de emergencia sanitaria mediante

17. Para más información, véase: «Stratégie nationale d'immigration et d'Asile» (en línea) «<https://marocainsdumonde.gov.ma/strategie-nationale-dimmigration-%20et-dasile/>»

18. En junio de 2007, se firmó un acuerdo entre el Gobierno de Marruecos y ACNUR mediante el cual se le delegaba al segundo el examen y los trámites para otorgar el asilo.

19. Desde 1957, Marruecos cuenta con la Oficina de Refugiados y Apátridas (BRA, por sus siglas en francés) conformada a partir del Real Decreto 5-57-1256, resultado de la ratificación de la Convención de Ginebra sobre los Refugiados, en 1956. En ese decreto se establecieron disposiciones para la aplicación de la Convención y se encomendaba a la BRA la protección jurídica y administrativa de los refugiados, pero no contempló aspectos relativos al procedimiento de solicitud ni instrucciones de cómo manejar los casos de asilo (Mrabti, 2018:14).

20. Para más información, véase: Amnistía Internacional. «Marruecos: La incansante ofensiva contra miles de personas migrantes y refugiadas de origen subsahariano es ilegítima» (7 de septiembre de 2018) (en línea) <https://www.amnesty.org/es/latest/press-release/2018/09/morocco-relentless-crackdown-on-thousands-of-sub-saharan-migrants-and-refugees-is-unlawful/>

el Decreto Ley 2-20-292²¹ –al día siguiente se aprobó su reglamento–, obligando al ACNUR a adaptar su trabajo a esta situación, es decir, restricción de movilidad y confinamiento. Para junio, el Alto Comisionado había detectado una intensificación en las vulnerabilidades sociales y económicas de las personas refugiadas y solicitantes de asilo (ACNUR, 2020). Con todo, y pese a que la Oficina de Refugiados y Apátridas (BRA, por sus siglas en francés) había cancelado sus actividades por la pandemia, en septiembre el ACNUR continuaba con su trabajo de registrar y determinar el estatus de refugiado (ibídem), aunque dejando en una zona gris la formalización de los estatutos reconocidos y, por lo tanto, en una situación de mayor vulnerabilidad a las personas refugiadas y solicitantes de asilo. Por ejemplo, un número considerable de solicitantes sufrió detenciones arbitrarias, reclusión en centros no formales o clandestinos, así como deportaciones.

A continuación, se examinará la evolución del control migratorio en Marruecos desde 2018, centrando la atención en la utilización de centros no formales de internamiento, en las deportaciones y en los desplazamientos forzosos; además de en cómo esta situación afecta a personas migrantes, principalmente negras, solicitantes de asilo, refugiadas y menores de edad. Por último, se analizará de qué manera la COVID-19 han influido en estas prácticas.

Las prácticas de detención y deportación en Marruecos

En Marruecos, pese a ser sede del Observatorio Africano para las Migraciones (OAM) –establecido en diciembre de 2020 por el Gobierno marroquí junto con la Unión Africana (UA)– y de contar con un Observatorio Nacional de la Migración, no se publica información de manera sistemática sobre detenciones ni deportaciones de personas migrantes. Los datos son escasos y fragmentados y, por lo tanto, no permiten un estudio exhaustivo del número de detenciones ni de deportaciones, como tampoco sobre los centros de detención

21. Para más información, véase: Chambre des Représentants du Maroc (en línea) <https://www.chambredesrepresentants.ma/fr/ةيغريشتل-اصوصنل/le-projet-de-decret-loi-ndeg220292-edictant-des-mesures-specifiques-letat-durgence>

no formal. No obstante, la información proporcionada por las organizaciones locales e internacionales, junto con la obtenida en las entrevistas realizadas, permite identificar tendencias en las políticas y prácticas de control migratorio. En los siguientes párrafos se analizarán estas prácticas entre 2018 y agosto de 2021, teniendo en cuenta la emergencia sanitaria de la COVID-19 y el acceso a la protección internacional durante la detención.

Las deportaciones

En Marruecos, la deportación se plasmó en la legislación a través de la Ley 02-03 bajo la figura de *éloignement à la frontière*. Sin embargo, no es sino hasta 2019 que estas medidas se oficializaron al publicarse el «Balance relativo a las operaciones relacionadas con la inmigración irregular en 2018» por el Ministerio de Interior (véase anexo 2)²², donde se describen las deportaciones como una herramienta de la gestión de la migración irregular. Cabe señalar que este informe se publicó en el marco de la protección establecido por la SNIA y tras las dos etapas de regularizaciones extraordinarias, lo cual refleja la reproducción de la lógica protección-deportación.

Entre 2015 y 2018, las operaciones de control se articularon en torno a cuatro ejes: a) intercepciones en intentos de migración irregular, b) operaciones de socorro en el mar a lo largo del litoral norte, c) desmantelamiento de redes de tráfico de personas y, por último, d) operaciones de retorno. Durante 2018, se realizaron «5.608 operaciones de retorno voluntario de migrantes en situación irregular, de las cuales 1.509 fueron en coordinación con la OIM» (véase anexo 2). Del total de las deportaciones señaladas, se habrían realizado un 33% a Guinea Conakry, un 22% a Costa de Marfil, un 18% a Senegal, un 11% a Camerún y un 4% a Congo Brazzaville. Según estos datos, 4.099 personas habrían sido deportadas desde Marruecos a sus países de origen²³. Por su parte, el Departamento de Estado estadounidense evidenciaba en un informe sobre derechos

22. Se accedió a este documento en papel durante los trabajos etnográficos. No está disponible en formato electrónico. Todas las traducciones del documento son de las autoras.

23. Como se desprende de los datos, las detenciones y deportaciones afectan a personas negras que, en Marruecos, son mayoritariamente originarias de África Occidental y Central. En este sentido, el Alto Comisionado de Naciones Unidas para los Derechos Humanos denunció la existencia de restricciones severas en la libertad de circulación a las personas migrantes en Marruecos, en especial, de personas negras provenientes mayoritariamente de África Occidental y Central. Véase : <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=24043&LangID=F>

humanos la deportación desde Marruecos de 3.000 personas a Guinea Conakry, Malí y Camerún durante 2020²⁴, lo que demuestra la consolidación de la práctica de la deportación en Marruecos como herramienta de control migratorio.

La información contenida en este documento (véase anexo 2) es ambigua con respecto al carácter voluntario o forzado de los «retornos». El subtítulo IV se refiere a las «operaciones de retorno», pero el texto habla de «operaciones de retorno voluntario». A pesar de referirse al «retorno voluntario», el documento diferencia entre las operaciones realizadas con el apoyo de la OIM y las ejecutadas exclusivamente por Marruecos. Algunas investigaciones aluden a la dudosa *voluntariedad* de las deportaciones (Maà, 2019). En cualquier caso, pese a la ambigüedad terminológica, tanto el Departamento de Estado estadounidense como diferentes organizaciones han evidenciado dichas deportaciones más allá de los programas

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de «retorno voluntario». De la misma manera, la totalidad de los testimonios recogidos en esta investigación así lo han expresado. Tal es el caso de Braim, un hombre de nacionalidad maliense quien afirmó haber sido deportado el 3 de noviembre de 2018 desde Casablanca a Malí, país del cual huía (ETel6)²⁵. Tras haber solicitado asilo en la ciudad de Melilla, la Guardia Civil lo entregó a las autori-

dades marroquíes en el puerto de Nador, junto con el resto de personas deportadas. Desde allí, todas ellas fueron trasladadas al centro de detención no formal de Arekmane (Nador), donde Braim estuvo 11 días sin acceso a una defensa legal ni a la protección internacional. Durante este período, el consulado de Malí visitó el centro y emitió salvoconductos para proceder a la deportación de sus connacionales, la cual se efectuó en un vuelo comercial de Royal Air Maroc desde Casablanca. Según el testimonio, diez hombres fueron deportados en ese mismo vuelo, bajo la custodia de las autoridades marroquíes hasta Bamako, donde Braim decidió huir de nuevo inmediatamente por temor a perder la vida.

24. Para más información, véase: Departamento de Estado de Estados Unidos. «2020 Country Reports on Human Rights Practices: Morocco» (30 de marzo de 2021) <https://www.state.gov/reports/2020-Country-reports-on-human-rights-practices/morocco/>

25. El código de identificación de las entrevistas indica, en primer lugar, el tipo de entrevista, presencial (EP) o telefónica (ETel); en segundo lugar, la ciudad en la que se realizaron de manera presencial, Rabat (Rab) o Tánger (Tan); y, por último, la numeración por orden de realización.

El testimonio anterior demuestra la manera en que se llevan a cabo las deportaciones, además de constatar la existencia de centros no formales de internamiento, desde donde se realizan deportaciones sin garantías jurídicas. En la misma línea, Idrissa, un joven guineano de 25 años, afirmó haber sido deportado en un vuelo comercial de Royal Air Maroc, en febrero de 2021, desde Casablanca (ETel8). La deportación se produjo tras dos semanas de detención, sin acceso a defensa legal ni a protección internacional, ni a la intervención del ACNUR. El joven menciona haber sido obligado a firmar «muchos papeles» durante el período de internamiento, de los cuales desconocía el contenido. Esta deportación se habría realizado junto con otras dos personas de la misma nacionalidad detenidas en la misma operación de la Marina Real, durante la travesía en el mar de Alborán (ETel8). Por último, este testimonio comentó la realización solo de una prueba de PCR en el momento de la entrada al centro, el uso flexible de mascarillas y añadía: «Nos hicieron firmar muchos papeles... pero no nos dijeron que fueran voluntarios... eso no fue voluntario, nos obligaron... ¡no sabíamos que nos iban a deportar!».

Según organizaciones de derechos humanos locales, durante el año 2020 se realizaron otros vuelos de deportación desde Marruecos, entre ellos, un vuelo con 174 personas a Senegal y otros dos a Malí y a Guinea Conakry (Iridia, 2021). El vuelo a Guinea deportó a 74 personas, entre las cuales dos menores no acompañados identificados como hijos de un hombre que no era su padre que fueron deportados a Guinea como familia a pesar de la negativa del adulto al respecto. En el mismo vuelo, una mujer senegalesa fue deportada como ciudadana de Guinea (EPRab1; Otazu, 2020). Asimismo, se ha tenido constancia de la visita de personas de los consulados a diferentes centros de detención no formales para identificar a sus nacionales y ejecutar la deportación (EPTan1; ETel1; ETel2, ETel3; ETel4; EPTan1).

Desplazamientos forzados internos

Durante 2018, el Ejecutivo marroquí reconocía el desplazamiento interno de 1.600-1.800 personas a otras ciudades del país donde «las condiciones de vida son mejores» (El País, 2018). En esta misma línea, el 6 de septiembre de ese año, el portavoz del Gobierno, Mustapha Khalfi, justificaba los desplazamientos forzados por cuestiones de seguridad nacional y bajo el marco de la Ley 02-03. Por su parte, el Departamento de Estado estadounidense confirmó la detención de migrantes y el desplazamiento forzoso de 10.000 personas subsaharianas en los alrededores de Ceuta y Melilla en 2020. Estos datos corroboran la utilización de estas prácticas de «dispersión» de la población migrante subsahariana lejos de las fronteras europeas como herramienta de control (El Arabi, 2020).

Lo atestigua Tarik, guineano de 21 años, quien entró por Oujda (frontera con Argelia) a Marruecos y se instaló en los alrededores de Nador durante nueve meses marcados por el inicio del estado de emergencia sanitario. Según su testimonio, en los primeros meses del estado de emergencia la policía dejó de asediar los campamentos de Nador; sin embargo, transcurrido un tiempo la policía retomó las agresiones: «estuve más de nueve meses viviendo en los bosques de Nador... cada mañana te despiertas para huir... a las cuatro o a las cinco de la mañana... la *bumbula*²⁶ viene a por nosotros a los bosques... y te persiguen por todas partes... a veces te atrapan y te deportan a tu país» (EPRab6). En una ocasión, tras haber sido detenido en los bosques, Tarik fue desplazado a Marrakech en un autobús atestado de hombres, mujeres y bebés «todos negros», sin medidas sanitarias de prevención de la COVID-19. Y añadía: «si te atrapan en Nador te llevan hasta Casablanca o hasta Marrakech o Fes. Después, te tienes que pagar el transporte para volver a los bosques de Nador... También te agreden... [los policías] te quitan los teléfonos, el dinero... te quitan todo» (EPRab6). Al final, fueron abandonados en la estación de autobuses de Marrakech, sin dinero ni teléfonos móviles. En otra ocasión, estuvo detenido dos días en un centro cerca de Nador, gestionado por las Fuerzas Auxiliares (militares); las mujeres, con los niños y niñas, fueron liberadas en pocas horas (EPRab6).

Otro testimonio, Amine, un líder comunitario de nacionalidad nigeriana asentado en Rabat (EPRab4), afirmó haber sido identificado por la policía en Hay Nada (Rabat) para comprobar su documentación, en enero de 2021. Sostenía que la policía «no pregunta a los marroquíes, solo a los negros». Tras mostrar su tarjeta de residencia en proceso de renovación, automáticamente fue detenido en una comisaría. Estuvo encerrado en una celda «como un criminal» durante dos días en los que le tomaron las huellas dactilares y fotografías. Según sus palabras, el autobús en el que fue desplazado realizó un recorrido por Rabat recogiendo a otras personas hasta alcanzar su capacidad de espacio, con el objetivo de desplazarlas o deportarlas (EPTan1; EPRab2; EPRab3; EPRab4). Finalmente, Amine fue trasladado en un autobús a Marrakech donde fue abandonado.

Igualmente, Mamadú, un guineano de 26 años, cuenta que sufrió varias detenciones y tres desplazamientos forzosos entre 2018 y 2019 desde los bosques de Nador (ETel5). En 2018, fue detenido en el mar por la Marina Real Marroquí junto con otras personas, incluyendo mujeres y niños. Todas ellas fueron trasladadas en un barco de la misma Marina al puerto de Nador, donde permanecieron detenidos por unas horas. Seguidamente, fueron desplazadas desde

26. Término utilizado para referirse a la policía.

el puerto en autobús hasta Ouarzazat donde fueron abandonadas. El joven añadía: «depende de ti... y de cómo te las arregles para volver al norte... siempre es así». El segundo desplazamiento se produjo también por parte de la Marina marroquí en el mar de Alborán. Esta vez, Mamadú fue trasladado a la ciudad de Beni Mellal desde el puerto de Nador en autobús (ETel5). El tercer desplazamiento sucedió desde Alhucemas, donde fue detenido en una zona cercana a las costas. En esta ocasión, fueron detenidos en un edificio abandonado: «no era una comisaría, era un búnker abandonado». Permaneció detenido cinco días en el búnker en algún lugar cerca de la ciudad de Alhucemas (ETel5). Durante las detenciones no se produjo ninguna intervención legal, médica, humanitaria o de otra índole.

Centros de detención no formales

Las prácticas de control migratorio se aplican en todo Marruecos y consisten en detener con el objetivo de desplazar de manera forzada hacia el interior del país y/o deportar a los migrantes a sus países de origen. Estas prácticas se intensifican en las zonas donde se concentran las personas en situación irregular, teniendo en cuenta que las rutas cambian según la coyuntura del momento. De esta manera, en 2018, el aumento de llegadas a las costas andaluzas tuvo como consecuencia un refuerzo del control en el mar de Alborán por parte de la UE y de las autoridades marroquíes en las regiones cercanas a las costas mediterráneas de Ceuta y Melilla. Ese mismo año 2018, se estableció el Centro de Coordinación en el Alborán, integrándose este al control de Frontex²⁷. Asimismo, con la declaración del estado de emergencia sanitaria, el 23 de marzo de 2020, se restringió la libertad de circulación para controlar la expansión de la COVID-19 y, simultáneamente, se cerraron las fronteras terrestres con Ceuta y Melilla. En consecuencia, se produjo el desplazamiento de la ruta migratoria hacia el sur a través de la ruta canaria, obligando a Marruecos a desplegar los mismos mecanismos de control y prácticas policiales en esa región en zonas contiguas a las ciudades de Dajla, Agadir, El Aiún y Tarfaya, a unos kilómetros de las Islas Canarias (GADEM, 2019; Iridia, 2021).

27. BOE Orden PCI/842/2018, de 3 de agosto, se publica el Acuerdo del Consejo de Ministros de 3 de agosto de 2018, que dispone la creación de la Autoridad de Coordinación de las actuaciones para hacer frente a la inmigración irregular en la zona del Estrecho de Gibraltar, mar de Alborán y aguas adyacentes y se establecen normas para su actuación (en línea) https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-11138

Independientemente del lugar y la región de la detención, parece existir un patrón en la práctica de las autoridades marroquíes, el cual consiste en internar en espacios no oficiales (bunkers, centros públicos destinados a otros fines, edificios abandonados o subsuelos de comisarías) sin respetar lo establecido en su propia ley ni en la legislación internacional. Al tratarse de centros no oficiales, es difícil monitorear la vulneración de los derechos humanos, y las personas encerradas no tienen acceso a la protección internacional, ni acceden a una defensa legal, y terminan siendo desplazadas y/o deportadas a los países de origen tras la intervención de los consulados. Todas las fuentes consultadas señalan a la Marina Real como autoridad encargada de las operaciones de detención en el mar y posterior traslado a los centros, incluso cuando las embarcaciones alcanzan territorio español. En este caso, las personas son entregadas por la Guardia Civil

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a las autoridades marroquíes, incluyendo aquellas con perfiles de vulnerabilidad (AMDH, 2019a y 2019b; Desalambre, 2019; Lo Coco, 2020; Iridia, 2021).

En territorio marroquí, las detenciones en espacios informales y los desplazamientos forzados son ejecutados por un grupo mixto conformado por agentes de las Fuerzas Auxiliares, la Policía Nacional y la Gendarmería. En la ciudad de Nador, se han identificado cuatro espacios de detención no formal: uno en la sede de la Gendarmería Real, un segundo en la Comisaría Central, un tercero en el centro situado en Arekmane y un cuarto en Berkane, según Global Detention Project²⁸ y constatado por ETel7 (Carretero, 2018; AMDH, 2019a). Los dos primeros entraron en funcionamiento en 2015 y el de Arekmane en septiembre de 2018 (GADEM, 2019; AMDH, 2019a y 2019b, EPRab2).

El centro de Arekmane es un centro vacacional para la juventud que depende oficialmente del Ministerio de Juventud y Deporte y es gestionado de facto por el Ministerio de Interior (AMDH, 2019a y 2019b). En este centro se mantienen de-

28. Que también los ha identificado como centros en los que tiene lugar la detención de solicitantes de asilo y menores de edad, además de las personas en situación irregular. Su ubicación en el mapa se puede consultar en el siguiente enlace: <https://www.globaldetentionproject.org/countries/africa/morocco>

tenidas a personas provenientes mayoritariamente de África Occidental y Central con la intención de desplazarlas forzosamente o deportarlas a sus países de origen o a Argelia. Cuando el objetivo es la deportación, se producen visitas de las embajadas de los países de origen para identificar a sus nacionales y ejecutar la deportación (EPTan1; EPRab1; EPRab2; ETel6; ETel7; ETel8; Bah, 2019). Aquí también se recluye a las personas detenidas durante las redadas o en embarcaciones en el mar de Alborán y a las víctimas de devoluciones en caliente por parte de las autoridades españolas (EPTan1; EPTan2, EPRab6; ETel3; ETel5; ETel6; ETel7; ETel8). Es un centro que no dispone de espacios habilitados para mujeres y niños, aunque estos son liberados a las pocas horas, según los testimonios recogidos.

Tanto Braim (ETel6) como Mamadú (ETel5) describen cómo este centro está organizado por salas amuebladas con camas o colchones donde los detenidos son agrupados en grupos de unos 20 hombres. Si bien estas salas cuentan con baños, en estos no hay jabón ni toallas. Las puertas de las salas permanecen cerradas con vigilancia permanente por efectivos de las Fuerzas Auxiliares; las ventanas y las persianas también están cerradas las 24 horas del día, por lo que permanecen a oscuras. Braim describía las condiciones del encierro de la siguiente manera: «la ventana está clavada con palos para que no te puedas escapar; están bloqueadas (...) estás todo el día oscuras; ahí dentro es como una prisión, imagínate no puedes ni salir a tomar aire, te pasas todo el día encerrado, no sabes si es de noche o de día, no sabes qué hora es, a oscuras todo el día con la luz encendida y no te permiten salir a pasear» (ETel6). En 11 días de detención, Braim no pudo ver el exterior. Con respecto a la alimentación, esta era suministrada tres veces al día, y debían comer sentados en las camas o en el suelo porque no había mesas o sillas. Por último, este testimonio constató la deportación de unas 10 personas por día.

Según el presidente de la Asociación Marroquí de Derechos Humanos (AMDH), situada en Nador, a partir del 15 de marzo de 2020, se intensificaron las detenciones a personas migrantes en las ciudades del sur (Yabiladi, 2020b), reproduciendo el mismo patrón de redadas, detenciones en centros no oficiales, desplazamientos forzosos en autobuses y deportaciones a los países de origen (GADEM 2019; EPTan1; ETel2; ETel4; ETel5, ETel7). Así, las autoridades pusieron en marcha dos nuevos centros de detención en El Aiún, para las personas interceptadas en el mar o identificadas durante las redadas en las ciudades, establecidos en una escuela y en un centro de la juventud (EPRab2; ETel2; ETel3; ETel4), con vigilancia permanente sin la intervención de un juez. Las condiciones en estos espacios son precarias y, en consecuencia, las personas encerradas se enfrentan a una situación de insalubridad insostenible: sin agua, sin utensilios de higiene personal, sin alimentación adecuada y, en ocasiones, sin camas (ETel2; ETel3; ETel7; Louran, 2020).

Las personas entrevistadas señalan el uso generalizado de redadas discriminatorias, durante los primeros meses de confinamiento, para la aplicación de la prueba PCR para detectar la COVID-19, sobre todo contra personas negras y migrantes en general. Según Louran (2020) –y confirmado por los entrevistados ETel2, ETel3 y ETel4– el 28 de junio de 2020, en la ciudad del El Aiún, 50 personas negras y migrantes habrían sido víctimas de redadas en sus domicilios, en lugares de trabajo y en la vía pública para la realización de dicha prueba. Para ello, estuvieron detenidas en las aulas de un colegio durante siete días sin acceso a agua ni a ropa limpia. De estas 50 personas, 11 dieron positivo y fueron trasladadas a un hotel; las que dieron negativo fueron deportadas a sus países de origen sin garantías y sin seguir los procedimientos establecidos. En mayo de ese año, se desencadenaron protestas en los lugares de detención, consiguiéndose la posibilidad de cumplir las cuarentenas en los propios domicilios de las personas migrantes bajo la vigilancia de las autoridades (Yabiladi, 2020c). Teóricamente, las autoridades se hicieron cargo de la manutención de estas personas durante 15 días. Al respecto, una asociación local en El Aiún (ETel2) y EPTan1 refieren el uso de la COVID-19, por parte de las autoridades, para justificar las redadas y las deportaciones a los países de origen desde el aeropuerto de Dajla o El Aiún, bajo el argumento de la seguridad sanitaria.

Acceso a la protección internacional durante la detención

Las personas entrevistadas señalan una falta de acceso a la protección internacional en los centros de detención. Durante las detenciones, se dificulta el acceso a la información sobre la posibilidad de solicitar asilo a los organismos competentes. Además, la informalidad de los centros de detención no permite llevar un control por parte de organismos internacionales u organizaciones locales. En este sentido, se desconoce la existencia de mecanismos implementados por el ACNUR capaces de identificar a potenciales solicitantes de asilo o refugiados en estos lugares, al menos de manera oficial. Esto dificulta la identificación y la estimación del número de personas que han sido víctimas de estas prácticas (EPTan1; EPTan2; ETel2; ETel4; ETel5; ETel6; ETel7; ETel8). A través de las entrevistas, solo se ha conocido una intervención del personal del ACNUR para una evaluación rápida durante la detención de un grupo en una comisaría de Tánger. Y ello debido a que las personas detenidas tenían contacto con organizaciones de derechos humanos en Oujda y pudieron aportar la documentación para solicitar la intervención del ACNUR, dado que entre ellas había solicitantes de asilo (ETel4).

Los informes del ACNUR carecen de datos acerca de estos centros e información sobre la práctica de la identificación, detención e internamiento de personas

migrantes, muchas de ellas con necesidades de protección internacional o solicitud de asilo, por lo que se deduce la inexistencia de mecanismos para garantizar el derecho de asilo durante la detención. Sin embargo, los consulados de Guinea, Malí y Senegal son conocedores de la existencia de estos centros de detención, al participar en este proceso identificando a connacionales y facilitando las deportaciones, como argumentan Braim (ETel6) e Idrissa (ETel8) en Arekmane.

A la situación de control migratorio, se han sumado las medidas de prevención de la pandemia, que han tenido mayor impacto en las personas migrantes. La crisis económica originada por estas medidas ha empujado a muchas personas al desempleo y, en consecuencia, a una situación de irregularidad, obligándolas a saltarse el confinamiento para sobrevivir, aumentando el riesgo de ser detenidas y deportadas sin garantías desde centros creados ad hoc para este fin (ETel3; ETel7; ACNUR, 2020; ETel7; Yabilabi, 2020). De hecho, los límites ambiguos entre cuarentenas obligatorias por cuestiones sanitarias y detenciones en centros informales de migrantes se han puesto de manifiesto en las regiones de Dajla y El Aiún, a través de confinamientos de dudosa legalidad (EPTan1; ETel2; ETel3; ETel7); una situación que ha dificultado aún más el acceso a la protección internacional de las personas detenidas. En esta línea, la Association pour le Développement et la Sensibilisation des Guineans migrants au Maroc (ADES-GUIM), junto con el resto de las asociaciones entrevistadas, reportan la complicada situación de la población migrante durante el período *duro* de la pandemia (marzo-julio de 2020), combinada con la presión racista de la policía en las calles (EPRab1; EPRab2; EPRab3; EPRab4; EPTel1; EPTel2; EPTan2).

En los centros de detención de Marruecos, se dificulta el acceso a la información sobre la posibilidad de solicitar asilo a los organismos competentes. Los informes del ACNUR carecen de datos sobre estos centros.

Conclusiones

Marruecos ha plasmado la doble lógica de la «protección-deportación/control» en sus leyes nacionales, principalmente a través de la Ley 02-03 y la estrategia de la SNIA; sin embargo, la parte de deportación/control se ha implementado con mayor fuerza a través de un estricto control migratorio que se ha materializado en la identificación, mediante redadas policiales, detenciones, el internamiento fuera de los marcos legales establecidos por la ley, el desplaza-

miento forzoso o la deportación de las personas migrantes en situación irregular y, en varias ocasiones, de personas con estatus de refugiado o en trámites de solicitud de asilo.

Así, pese a la existencia de marcos de protección, de una retórica de derechos y de que el ACNUR y el BRA hayan adaptado sus actividades a las nuevas condiciones impuestas por la COVID-19, la detención y la deportación se han convertido en herramientas de control migratorio, principalmente, contra las poblaciones de África Occidental y Central. Para llevar a cabo esta actividad, se están empleando centros de detención no oficiales como bunkers, edificios abandonados, subsuelos de comisarías o escuelas donde se retiene a las personas que acabarán siendo desplazadas o deportadas. Algunos de ellos están activos de manera permanente, como es el caso del centro de Arekmane, en la región de Nador; otros, son abiertos o cerrados según las necesidades. Estos últimos, gestionados generalmente por las Fuerzas Auxiliares, no están preparados para la privación de libertad y, por tanto, sus condiciones son insalubres e indignas, además de que en ellos se llega a practicar la tortura física y psicológica, al dejar a oscuras y sin ventilación a las personas detenidas durante toda su estancia. En estas condiciones, es imposible acceder a la protección internacional o a algún tipo de asistencia legal.

Pese a que las asociaciones pro derechos humanos y activistas señalan la existencia de dichos centros y la práctica que en ellos se realiza, el ACNUR no los visita ni los menciona en sus informes. Por el contrario, los consulados involucrados sí lo hacen para identificar a sus connacionales y, posteriormente, emitir los salvoconductos para ejecutar las deportaciones. Al respecto, en este estudio se constata la existencia de deportaciones desde Marruecos de personas solicitantes de asilo tras ser identificadas por sus consulados, por ejemplo, en el centro de Arekmane, vulnerando el derecho a la protección internacional y al asilo. Asimismo, el estudio constata la existencia de casos de deportaciones en cadena desde España; una vez en Marruecos, estas personas son nuevamente deportadas a los países de origen desde los centros de detención, como así lo refleja el testimonio de Braim.

Durante 2018, la presión de los controles, detenciones y deportaciones se concentraron en el norte del país. Sin embargo, con la declaración del estado de emergencia por la COVID-19, el cierre de las fronteras terrestres con Ceuta y Melilla y el aumento del control, por parte de la UE, en el mar de Alborán, se desplazaron los flujos migratorios hacia las regiones de El Aiún, Dajla y Tarfaya, por lo que se trasladaron también los mecanismos de control, detención y deportación a estas regiones. Estas medidas, así, se han ido adaptando y desplazando en medio de la informalidad y opacidad, lo que ha generado espacios de vulneración de derechos; una dinámica que se intensificó con las cuarentenas y controles sanitarios causados por la COVID-19.

Por último, cabe destacar que las medidas implementadas para el control de la pandemia no son fácilmente distinguibles de las medidas de control migratorio. Ello ha generado una ambigüedad que ha abierto espacios de detención de facto, aumentando la discriminación contra las personas negras migrantes bajo la justificación de la salud pública. De esta forma, los criterios médicos relativos a la prevención de la propagación de la COVID-19 han funcionado como elementos de legitimación de detenciones y de confinamientos de personas migrantes.

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Anexo 1. Lista de entrevistas

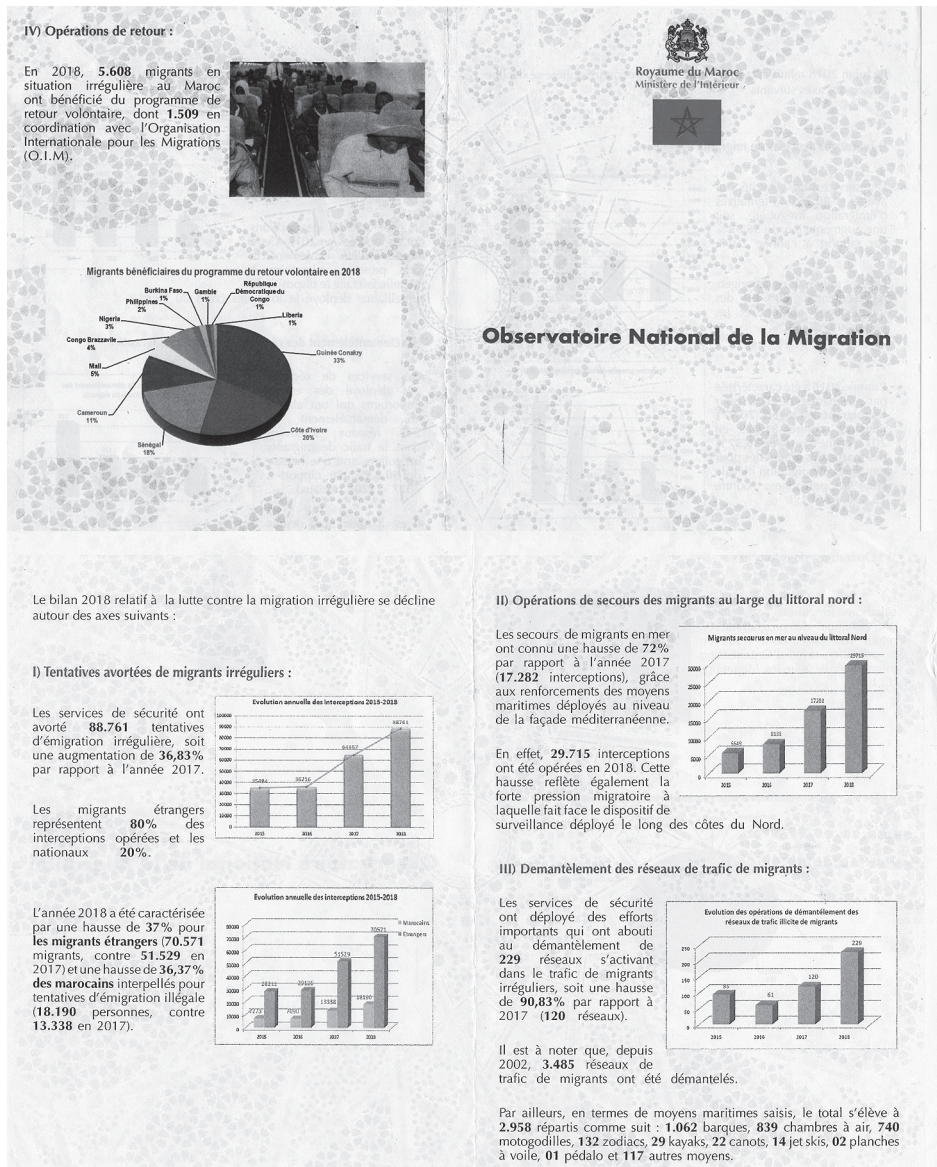
Nº	Código ^a	Descripción	P/T ^b	
1	EPTan1	Activista por los Derechos Humanos	P Tánger, Marruecos	
2	EPTan2	Activista y académica en Derechos Humanos	P Tánger, Marruecos	
3	EPRab1	Association pour le développement et la sensibilisation des guinéens migrants au Maroc (ADESGUIM)	P Rabat, Marruecos	
4	EPRab2	ONG local	P Rabat (Marruecos)	
5	EPRab3	Stephan Mboma Ngulutu, representante de la Asociación diáspora congoleña en Marruecos (Dicoma)	P Rabat (Marruecos)	
6	Amine (EPRab4)	Líder comunitario de nacionalidad nigeriana residente en Rabat	P Rabat (Marruecos)	
7	EPRab5	Dr. Mehdi Alioua, experto en migraciones, Universidad Internacional de Rabat	P Rabat (Marruecos)	
8	Tarik (EPRab6)	Hombre guineano, víctima de desplazamiento forzoso	P Rabat (Marruecos)	
9	(ETel1)	ONG local	Telefónica	
10	(ETel2)	AMDH Rabat	Telefónica	
11	(ETel3)	ONG local	Telefónica	
12	(ETel4)	ONG incidencia nivel europeo	Telefónica	
13	Mamadú (ETel5)	Hombre, guineano, víctima de desplazamiento forzoso	Telefónica	
14	ETel6 (Braim)	Hombre maliense, víctima de deportación en cadena desde Melilla hasta Malí	Telefónica	
15	Omar (ETel7)	Colectivo de migrantes subsaharianos en Marruecos	Telefónica	
16	Idrissa (ETel8)	Hombre guineano deportado a Guinea	Telefónica	

a. Los nombres son ficticios para facilitar la lectura en el texto. Hemos especificado los nombres de las personas y asociaciones que así lo especificaron.

b. P=Presencial; T=Telefónica.

	Zona de trabajo	Perfil entrevistado/a
	Marruecos	Activista por los Derechos Humanos
	Marruecos	Activista por los Derechos Humanos
	Rabat: El Aiún, Tin-Tin, Tarfaya, Agadir	Asociación Guineana de defensa de Derechos Humanos
	Marruecos	Asociación Marroquí de defensa de Derechos Humanos
	Rabat: Temara, Hay Nada, Takadoum	Líder comunitario de la comunidad migrante en Rabat, hombre, nacionalidad congoleña.
	Rabat: Temara, Hay Nada, Takadoum	Líder comunitario, hombre 47 años de edad, nacionalidad nigeriana, víctima de desplazamiento desde Rabat a Marrakesh
	Rabat	Académico experto en migraciones
		Hombre guineano, 21 años de edad, detenido en centro informal y desplazado desde Nador a Marrakesh
	El Aiún, Dajla, Tarfaya	Asociación Marroquí Región de Dajla y de El Aiún
	Marruecos	Asociación Marroquí de Derechos Humanos
	Nador, Alhucemas, Ouchda (Marruecos)	ONG local
	EU-Marruecos	ONG incidencia a nivel europeo
		Hombre de nacionalidad guineana, 26 años de edad, desplazado a Agadir
		Hombre de nacionalidad maliense, 25-30 años de edad, solicitante de asilo, deportado desde España a Marruecos y de Marruecos a Malí
	Marruecos	Colectivo migrante, activista
		Hombre, 25 años de edad, nacionalidad guineana, detenido en dentro de detención informal y deportado en febrero de 2021

Anexo 2. Balance relativo a las operaciones relacionadas con la inmigración irregular en 2018



Nota: Publicado en papel por el Observatorio Nacional de la Migración del Ministerio de Interior marroquí en 2019.

Coloniality and Racism in the Spanish Deportation System: Exceptional Practices and Violence During Deportation to Morocco

Colonialidad y racismo en el sistema de deportación español: prácticas excepcionales y violencia durante las deportaciones a Marruecos

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Proponents of biopolitical approaches to migration have recently been accused of epistemological racism by those who advocate postcolonial perspectives. This article aims to contribute to the postcolonial understanding of the Spanish deportation system by focusing on its connections with racism, exception, and violence. It does so by relying on Fanon's anti-colonial ideas, together with Mbembe's biopolitical developments and the concept of coloniality. It analyses the deportation system as implemented in Spain and shows that it is within a legal materiality that results in racialised violence, exception and the production of death. The case of Morocco and six direct testimonies of deported nationals are studied. The analysis leads to the conclusion that the deportation system as implemented in Spain is intertwined with coloniality, exception and violence, and often produces the death of racialised groups.



Abstract

Recientemente, los estudios migratorios, en particular las perspectivas biopolíticas, han sido acusadas de racismo epistemológico en lo que se ha denominado un giro postcolonial. Apoyándose en el pensamiento anticolonial de Franz Fanon el desarrollo teórico de Achille Mbembe y el concepto de colonialidad, este artículo pretende contribuir una visión postcolonial en el estudio del sistema de deportación español. Para ello, explora las conexiones entre racismo, la excepción, la violencia y la muerte de grupos racializados en el marco de las deportaciones de este país utilizando Marruecos como estudio de caso y analizando seis testimonios de personas deportadas. El artículo concluye que el sistema de deportación español está ligado al racismo de la historia colonial, la excepcionalidad, la violencia, en ocasiones produciendo la muerte de grupos racializados.

Racism; postcoloniality; deportation; borders; biopolitics

Racismo; deportación; poscolonialidad; fronteras; biopolítica



Key words

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1. Introduction

Detention and deportation are one of the main pillars of the EU's migration policy (Cassarino 2010; Isakjee et al., 2020).¹ The academic literature has coined the term “deportation regime” to refer to the institutionalisation and generalisation of deportation as a key instrument of migration control (Gibney, 2013; Isakjee et al., 2020; De Genova and Peutz, 2010).² According to Kalir (2019, pp. 20-24) a more appropriate term to use would be “Departheid”, which emphasises the violent racist exclusion and systematic production of death inherent to the deportation regime. Deportation is understood as the administrated technocratic and racialised violence that exists within the institutional procedures of migration control and comes with high levels of discretionary power (Flynn 2014; Kalir 2019, p. 20; Kalir & Wissink, 2016, p. 36; Lemberg-Pedersen, 2019, 2022). Departheid adopts different shapes and intensities depending on the State where it is employed (Kalir, 2019, p. 26).

Since the late 1990s, biopolitical studies on migration from different disciplines have seen borders as spaces of biopolitical intervention (Vaughan-Williams, 2015; Walters, 2011; Williams, 2015). A very productive area of research was built by applying biopolitical concepts to the study of borders and migration, such as exception, inclusive exclusion and bare life, which were developed by Foucault and Agamben (Foucault, 2000; Agamben, 2016, 2019; Esposito, 2008). Specifically, biopolitical approaches to deportation have focused on the exercise of sovereign power when controlling people who are out of place.³ These analyses often address specific laws, instruments, and practices (Andriasevic, 2010; Kalir, 2019, p. 22; Kalir & Wissink, 2016; Lemberg-Pedersen, 2022).

Biopolitical studies have recently been accused of epistemological racism by those advocating postcolonial migration approaches. This is due to the fact that European colonial history has been systematically excluded from the analysis of migration and border spaces. This is palpable in the lack of analyses of the role of racism as an embryonic element of migration policies (De Genova, 2018, p. 1769; El-Enany, 2020, p. 10; Grosfoguel, 2012; Grosfoguel, Oso & Christou, 2015; Wake & Kazami, 2020; Rajaram, 2018). Indeed, research on migration has usually ignored racism by failing to identify its connection with colonial practices (De Genova, 2018; Mayblin, 2017; Mellino, 2019).

In this context, a postcolonial turn has become established in migration and borders studies (Tudor, 2018). Postcolonial perspectives on migration have mainly drawn on Fanon's (1964, 2009) analysis of violence and racism, along with *necropolitics* as the production of death by bio-power defined by Mbembe (2016, 2019) and the idea of “coloniality” (Grosfoguel, 2011;

1 The EU's readmission agreements grew from 33 in 1986 to over 156 in 1995, 186 in 2004 and 216 in 2010 (Cassarino, 2010, p. 11).

2 For an analysis of the terminological debates on deportation, see Cassarino (2020).

3 There is a specific body of literature which explores the intersection between biopolitics, humanitarianism and border control (Cutitta, 2018; Fassin, 2012; Pallister-Wilkins, 2015).

Quijano, 2000; Mignolo, 2000). These perspectives have rigorously approached the role that colonialism and racism have played in the mobility of the population (Lemberg-Pedersen et al., 2022, p. 11; Mayblin & Turner, 2021).

Spain is a State in which deportation and death are often framed by exception, and where the Moroccan border plays a very prominent role (Ferrer-Gallardo & Gabrielli, 2018; Johnson & Jones, 2018; López-Sala & Moreno-Amador, 2020).⁴ The literature has studied deportation in Spain from different angles that have focused on detention, legal operators, police practices and the junction between prison and deportability (Barbero, 2014, 2018; Gonzalez Beilfus et al., 2018; Brandariz & Fernández-Bessa, 2017; García-España, 2017, 2018; López-Sala & Godenau, 2017; Martínez-Escamilla, 2017; Moffette, 2018; Orgaz, 2018). However, little research has been done into racism and colonial legacies, and consequently race-blind analyses have often been produced (De Noronha, 2019; Kalir, 2019; Lemberg-Pedersen, 2020).

The connection between the colonial history of Spain and Morocco and the use of exception and violence with regard to deportation require further specific reflection. Relying on the analysis of primary and secondary sources, this article adopts a postcolonial approach in connection with the Spanish deportation system and contributes to the existing understanding of the connections between racism, exception, and colonial history by taking Morocco as a postcolonial case study. To do so, it presents a theoretical framework and a methodology that analyses the implementation of *Departheid* in Spain as a specific context of legal materiality and practices that emphasise violence, exception and the production of death associated with racism. Relying on the case of Morocco, it analyses six testimonies which serve to illustrate these theoretical underpinnings. The article concludes that the implementation of *Departheid* is intertwined with coloniality, exception and violence and it causes the death of numerous racialised group members.

2. Theoretical framework

Built on Foucault's (2012) thinking, biopolitical approaches to migration focus on the relationship between governance and population at borders. Those perspectives propose to look at borders as spaces of biopolitical intervention where the protection of life is juxtaposed to the production of (certain) deaths (Walters, 2011; Cuttitta, 2018; Pallister-Wilkins, 2015; Vaughan-Williams, 2015). Whereas Foucault did not pay much attention to borders, the application of his concepts is essential to the understanding of borders as complex spaces where sovereignty is reasserted to control the movement of people who are "out of place" (Kalir, 2019, p. 22). These concepts condense the contradictory relations between law, sovereign power and violence developed through the ideas of "exception", "bare life" and "inclusive exclusion" (Walters, 2011, p. 139; Williams, 2015; Vaughan-Williams, 2015).

The state of exception is at the intersection of violence and the law (Agamben 2016, pp. 84-89). The definition of "exception" (Agamben, 2019) articulates the relationship between sovereign power, violence, and law and is understood to be the institutionalisation of dom-

⁴ For the purposes of this paper, the term "deportation" refers to all the cases covered by Organic Law 4/2000 on the Rights and Freedoms of Foreign Nationals in Spain and their Social Integration, concerned with the removal of foreign nationals from the territory of Spain (involving refusal of entry, expulsion, readmission) and to the practice of push-back.

ination (Foucault, 2000). Agamben defines exception as the specific moment at which the law is suspended in order to ensure its own continuity and its very existence. The absence of law (exception) is a permanent contradiction, but it is also necessary for the existence of the sovereign. For Agamben (2019), the suspension of law does not mean the elimination of the law, but the absence of it.

In this context, it is important to consider how lives are governed under exception. Agamben (2016, pp. 147-156) stated that bare life is an analogy of sovereign exception, opposed to and trapped by violence. When there is bare life, perpetrators remain unpunished because even though bare life is taken, this is not deemed to be a criminal offence. However, Agamben's ideas of exception and bare life have been heavily criticised by several migration researchers because these are absolute concepts, which eliminate opportunities and space for resistance (Mezzadra, 2005, 2011; Papadopoulos et al., 2008).

This paper conceives exception exclusively as the absence of law affecting certain spaces or situations, and bare life as the categorisation of migrants as manageable. These are fundamental concepts and approaches, but they are excessively focused on the European case and race blind. Foucault's theories and their further development have been identified as suffering from colonial amnesia, which has contributed to lowering a veil over colonial and racial oppression (Grosfoguel, 2012, 2015). As a consequence, they have received criticism from different approaches, mainly from feminism⁵ and postcolonial perspectives.

Researchers holding postcolonial views have accused migration studies scholars of failing to acknowledge race and class, which has shaped what has been termed "postcolonial turn" (De Genova, 2018; Mayblin & Turner, 2021; Mellino, 2019; Rajaram, 2018; Tudor, 2018, p. 1065). Postcolonial approaches usually understand race as a naturalised effect of a racist regime. These analyses consider race to be a fact of racism and provide tools to address the unequal exposure to violence and premature death suffered by racialised groups (De Genova, 2018, p. 1770; El-Enany, 2020, p. 7). "Racialisation" refers to the process by which people are embedded within hierarchical differentiation based on a colonial racist history and influenced by policies, politics and police practices (Fanon, 2009; Grosfoguel, 2016; Kalir, 2019, p. 480; Mayblin, 2017, pp. 29-49). Indeed, border policies and practices actively construct race (De Noronha, 2019, p. 2427).

Postcolonial approaches are essentially based on Fanon's anti-colonial thinking and Mbembe's biopolitical developments (Fanon, 1965, 2009 [1952]; Mbembe, 2011, 2016). This has taken shape along three axes: (1) the application of the idea of coloniality and the incorporation of colonial history into the analysis; (2) the consideration of violence against racialised subjects to be a continuation of colonial logic (Fanon, 2009); and (3) the inclusion of the concept of necropolitics (Mbembe, 2011).

Firstly, coloniality is the continuation of the racist colonial structure in the contemporary migration governance logic, legislation, and practices.⁶ This is "the invisible but constitutive side of the whole of modernity" (Cazzato, 2016, p. 3). In applying this concept, migration re-

5 While the inclusion of gender in the biopolitical approach is crucial to the analysis of borders, it is outside the scope of this paper. See Weheliye, 2014.

6 The decolonial approach developed coloniality within three spaces: power, knowledge and being. Quijano (2000), Grosfoguel (2007) and Mignolo (2000).

searchers aim to break away from the race-blind analysis that has characterised migration studies. Coloniality is extremely useful because it helps look at borders and international mobility by incorporating postcolonial perspectives and the role of racism (Grosfoguel et al., 2015). Recent research has addressed the continuation of colonial practices of population management and contemporary migration control measures. In this regard, Hannah Arendt argued that deportation is rooted in colonial configurations for managing “race subjects” (cited in Kalir, 2019). Kalir based his argument on this idea (2019, p. 20), showing that the colonial logic of managing non-white populations has persisted in the form of “Deapartheid”.

Secondly, Franz Fanon stated that colonial powers are, by definition, violent; they legitimise violence against the colonised (Fanon, 1961). For Fanon, both colonialism and the anti-colonial struggle require the use of violence. He articulated the analysis of violence with racism by developing the ideas of “zones of being” and “zones of non-being” (Fanon, 2009). On this basis, it can be argued that the process of racial production affects the entire population, resulting in a hierarchy that privileges certain groups while imposing violence and death on the “other” colonised, racialised subjects. Following Fanon’s conceptual developments, it can be said that postcolonialism and violence are intrinsically connected (Fanon, 1961, 2009; El-Enany, 2020; Moscoso 2021, p. 535).

Thirdly, Mbembe (2011, p. 23) placed the junction of racism with biopolitics at the crossroads of life, death and law. This means that certain groups of people are protected by sovereign power, while others are exposed to death. Racism is the dividing line between those who have the right to live and those who are to die (Foucault, 2000). Necropolitics represents the division between those who are protected and those who are left to die (Mbembe, 2011, p. 39). Mbembe established an analogy between the colony and the border as emblematic spaces of exception; colonial occupation is a space that produces bare life. His concept of “necropolitics” is interpreted as an exercise of sovereignty in colonial spaces. Therefore, racism is not an irrational phenomenon; on the contrary, it is in perfect harmony with contemporary capitalism (Mbembe, 2011; El-Enany, 2020, p. 25). Racism, as a structural element of biopolitics, facilitates the understanding of how the law ultimately “distribute(s) chances of life and death” (El-Enany, 2020, pp. 13-17, 24; Mayblin et al., 2020, p. 111).

Even though the connection between sovereignty, law and race is timidly acknowledged by classic biopolitics, racism and colonial legacies have not been sufficiently addressed within migration studies (Mellino, 2019, p. 137). Deportation practices illustrate how the law is part of a racial power regime that is in line with colonial configurations (El-Enany 2020, p. 27; Kalir, 2019, p. 21). Deportation in Spain is a good example of how border policies, laws and practices are intertwined with racism and violence against racialised people, and often occur within the framework of exception, coloniality and violence.

3. Methodology

Based on an analysis of primary and secondary data, this article introduces postcolonial contributions to the study of deportation in Spain. The analysis relies on postcolonial critics of biopolitical approaches to migration and specifically, on deportation, addressing the connections between exception, violence, and racism during deportation processes in Spain. After presenting an analysis of the concepts underpinning this, the paper illustrates how a deportation system has been implemented in Spain, focusing on the applicable legal developments and connecting them with violent events and the deaths of racialised migrants embedded in

a postcolonial geography. A methodological strategy used in this paper is analysing Morocco and Moroccan migrants as a postcolonial case study.

Morocco has been chosen as a case study for several reasons. First, because the Spanish/Moroccan border is a paradigmatic example of exception, violence and the death of racialised groups, particularly with regard to deportation in a postcolonial geography. Second, because despite the colonial history between Spain and Morocco, colonial history is under researched in Spain when it comes to migration. Third, the Spanish deportation exit system is concentrated on Moroccan nationals, as exceptional practices are often found at the border with this country (Ferrer-Gallardo & Gabrielli, 2018, Kalir et al., 2021, p. 48). In fact, Moroccan nationals are the most often deported. Over the past decade, more than 50% of Moroccan deportees from the EU were deported from Spain (Irdia, 2020). Fourth, because while most deportations involve Moroccan citizens, there is no clear public legal framework for them, a state of affairs that is clearly linked to exceptionality, violence and impunity. Fifth, because there is a lack of official data on deportation (which, in addition, is neither gender sensitive nor systematic or public) (Fernandez-Besa, 2019), and therefore, further research is needed of the Moroccan case. Lastly, Moroccan nationals are a unique case within the Spanish deportation system, as these citizens are the only ones that can be deported without having been registered with the police (López-Sala and Godenau, 2017, p. 159). These reasons explain the need to conduct further research on deportation logics between Spain and Morocco and explore their relationship with racism.

This paper explores the findings of a two-month period of fieldwork in Morocco in which six semi-structured qualitative interviews were held with Moroccan men⁷ who had been deported from Spain (Annexe 1). The experiences and discourses of deportees are rarely investigated, as testimonies are very difficult to collect due to the stigma attached to deportation in Morocco. In addition, the repressive measures against returnees and irregular migrants in that country makes contacting them extremely difficult. In light of this, snowball sampling was used for the selection of interviewees in an exploratory phase. The respondents' ages ranged between 24 and 48 years old, and most of the interviews were conducted in Madrid (Spain) and Rabat, Tangier (Morocco) between December 2020 and August 2021. One of them was held by telephone.

Given the difficulty of identifying deportees in Morocco, contact with deportees was based on trust, and so a non-purposeful sampling strategy was used. All the testimonies were related to fast-track deportation practices which were enforced in less than 72 hours directly from police stations or from prison gates (Barbero, 2018; Fernández-Bessa & Brandariz, 2016). As a result, fast-track deportations played an important role in the analysis of the Moroccan testimonies, as they helped contextualise what happens at the junction between measures of migration control and criminality (Barbero 2018, 2020; Brandariz & Fernandez-Bessa, 2017; Stumpf, 2016). Even though fast-track deportations are not in the majority in Spain, and the prison-deportation continuum is outside the scope of this research, the six testimonies collected show how racialised nationals face exceptionally violent practices and are disproportionate exposed to harm in the Spanish *Deporteid* (El Enany, 2020; Fernandez-Bessa & Brandariz, 2016; González-Sánchez, 2015).

⁷ Fernández-Bessa (2019) explained the 'gender gap' in deportation practices.

The following section will illustrate the implementation of *Departheid* in Spain as a specific materiality of law, including detention centre violent practices and the production of death (Kalir, 2019, p. 20). It will also address the racialisation of certain groups and outline the possible connections between racism, exception, and violence (De Noronha, 2019; Kalir, 2019; Kalir & Wissink, 2016, p. 36; Wake & Kazami, 2020).

4. The implementation of *Departheid* in Spain

The postcolonial literature has shown how the colonial logics used in managing non-white populations have resulted in a generalised “*Departheid*” (Kalir, 2019, p. 20; van Houtoum, 2010). According to El-Enany (2020, pp. 7, 11), the use of certain legal categories is the basis for racist violence, generating a scenario where the racialised poor are systematically controlled, policed, deported, and killed. In Spain, migration law has constructed a “spatial engineering for the identification, sorting and differential treatment of racialised migrants” to manage the mobility of illegalised migrants (Kalir 2019, p. 20; López-Sala & Moreno-Amador, 2020). As the Spanish deportation system is complex, the intention here is not to provide an exhaustive analysis of its functioning but to outline the main legal elements that are linked to the implementation of *Departheid*.

Since the entrance of Spain into the EU, Spanish legislation has progressively incorporated irregular status, detention centres and deportation into laws, legitimising a racist management of the population (Barbero, 2014; Moffette, 2018). The first Foreign Nationals Act in Spain (Law 7/1985 of 1 July)⁸ was the embryo of the current deportation system. The Organic Law on Rights and Freedoms of Foreign Nationals and their Social Rights in Spain (Law 4/2000 of 11 January), and its further reforms (hereinafter, Foreign Nationals’ Rights and Freedoms Act) later established deportation through different legal concepts, procedures, and safeguards of rights (Martinez-Escamilla, 2015; Fernandez-Bessa, 2021; Irídia, 2020). These measures included detention in detention centres (known as CIEs by its abbreviated form in Spanish “Centros de Internamiento de Extranjeros”) for at least 60 days; and precautionary detention for up to 72 hours before the request for internment deportation (Articles 60 and 61 of the Foreign Nationals’ Rights and Freedoms Act) (Brandariz & Fernandez-Bessa, 2017, p. 122; García-España, 2017, 2018). The regulations governing the operation and internal regime of the CIEs were subsequently approved. In Spain, deportation and detention centres are spaces where police forces regularly and arbitrarily violate foreign nationals’ rights (Barbero, 2014, p. 141, Irídia, 2020, 2021).

As noted by the academic literature, migration control measures are often associated with criminality, blurring the boundary between a migrant/foreign national and a criminal (Stumpf, 2006). In Spain, this is a significant association that takes the form of two different kinds of expulsion, an administrative one and a penal one. While Article 57.1 of the Foreign Nationals’ Rights and Freedoms Act provides that administrative expulsion is a legal consequence for serious or very serious offences and Article 57.7 of the same Law sets out that foreign nationals are to be expelled if they have a criminal record, Article 89 of the Spanish criminal code (including its further reforms) (hereinafter, CC) regulates the various legal means

8 Organic Law 7/1985, of 1 July, on the Rights and Freedoms of Foreign Nationals in Spain.

for expelling convicted foreigners.⁹ It sets out the various legal means for the expulsion of convicted foreign citizens and includes the possibility of deportation, even if they have legal residence in Spain (Brandariz & Fernández-Bessa, 2017a, pp. 120-122; García-España, 2017, 2018).¹⁰ This means that, under Spanish law, foreign nationals who have strong social ties to the country may be deported. Consequently, the same offence could have a different impact depending on who the perpetrator is (González-Sánchez, 2015). Applying El-Enany's (2000) ideas to the interpretation of the Spanish law, it could be argued that law contributes to the racialisation of some populations, exposing them to higher levels of police practices such as detention, violence, and deportation.

Once *Deapartheid* is legally implemented, deaths become a systematic occurrence because of the use of psychological and physical violence (Kalir, 2019, p. 24). Violence takes place through deportation, and it is applied through immigration policies and practices, which are devices for the racist administration of the population (Lemberg-Pedersen, 2020, p. 3). The killings of racialised individuals during deportation is facilitated by the fact that they are constructed as deportable and imprisonable subjects by law.

In Spain, several examples illustrate how violence and death regularly occur during detention and deportation, framed by exception (Ferrer Gallardo & Gabrielli, 2018; Johnson and Jones, 2018). In 2007, Osamuyi Akpitaye was suffocated to death during a deportation flight from Spain to Nigeria after his guards' duct-taped his mouth (Medina, 2008). Following Akpitaye's death, the Spanish authorities adopted a protocol for the transport of detainees,¹¹ reminding the competent authorities that they must not endanger the life of deportees while transporting them. This protocol authorises the use of medically prescribed sedatives on deportees. In other words, some remains of the colonial racist history have become embedded in the law, whereby racialised groups are exposed to violence.

Samba Martine was interned in a detention centre for foreign nationals in Madrid for 39 days in 2011. She died an agonising death despite having asked for medical assistance more than ten times. Samba died while being taken to the hospital in a police car on 19 December 2011. Nobody was held liable for her death. Despite Martine's repeated pleas for pain relief, she was not taken to a hospital in time and no tests were carried out, which are all examples of ill-treatment caused by racism. In 2019, a judgment¹² stated that there had been: "omissions [...] and [...] bureaucratic shortcomings (that) played a very important role in the failure to provide the necessary treatment to the internee". Similarly, Alik Manukyan died in unclear circumstances during isolation while he was interned in a detention centre in Barcelona (Rodríguez, 2013). One month later, Idrissa Diallo died in the same detention centre in unclear circumstances. Again, Mouhamed Bouderbala was found dead in his isolation cell in a CIE in Málaga (Archidona) in dubious circumstances in 2017, with no investigation undertaken.

9 Organic Law on the Criminal Code 10/1995 of 23 November.

10 Organic Law 1/2015, of 30 March, on the Criminal Code which modifies Organic Law on the Criminal Code 10/1995 of 23 November.

11 Ministry of Interior (2007) *Procedural rules for the repatriation and transfer of detainees by air and/or sea*. <https://www.reicaz.es/pagina.php?tipo=archivo&curl=normas-de-actuacion-en-las-repatriaciones-y-en-el-traslado-de-detenedos-por-via-aerea-y-o-maritima>

12 Judgment no. 201/2019, 10 June, fast-track procedure no. 10794/2011 on Samba Martine.

As noted by El-Enany (2020, p. 12), “contemporary immigration law maintains the global racial order, whereby racialised population groups are disproportionately deprived of access to resources, healthcare and safety, and are [...] systematically made vulnerable to harm and premature death” (Moscoso, 2021).

Besides, it is important to notice that Spain signed the Schengen Agreement¹³ in 1991, thus becoming part of the EU’s area of freedom, security, and justice but Ceuta and Melilla were excluded because they were seen as exceptional or special spaces. These cities hold an important place within migration studies, particularly regarding deportations, due to their close connection between exceptional practices often in the form of pushbacks, violent practices and border control (López-Sala & Moreno-Amador, 2020; Martínez-Escamilla, 2017, pp. 59, 62).

There are several examples on how exceptionality frames violence, impunity and death during deportation procedures and migration control. For example, fifteen racialised black migrants were killed with anti-riot material on the Tarajal beach¹⁴ by Spanish police forces at the border in 2014. No one has ever been condemned because of their deaths. Another recent example of violence and death of racialised people are the violent events of June 2022 between Melilla and Nador (Morocco), where at least 37 racialised people were killed due to the violent repressive methods applied for migration control purposes (International Amnesty, 2022). No emergency services were alerted despite the clear signs of danger to migrants’ lives. The Spanish Ombudsman stated that more than 470 people were illegally deported by the Spanish police.¹⁵ Even though these facts were filmed and proven, investigations were closed by the States prosecutor’s office in December 2022 based on the argument that “there did not seem to be any evidence of criminal actions on the part of the Spanish police officers”.¹⁶ The prosecutor’s office held that the officers did not witness the avalanche and endorsed the pushbacks. At Spanish borders, exception is not only legally but also politically invoked through the constant denial by the Spanish authorities of the use of violence and exceptional practices (Ferrer-Gallardo & Gabrielli, 2018).

Both legal underpinnings and documented events have been provided to show how De-partheid works, clearly linked to exception, violence and death at the Spanish-Moroccan border. They illustrate the racist structure that allow racialised people to be detained, deported, and exposed to violence and premature death by the authorities (El-Enany, 2020, p. 25; De Genova, 2018, p. 1770; Mayblin & Turner 2021, p. 50 and 73). As argued by De Genova, despite “the brute racial fact of this deadly European border”, racism “is seldom acknowledged, because it immediately confronts us with the cruel (post)coloniality of the new Europe” (2018, p. 1766).

13 Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany, and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, 14 June 1985

14 Comisión Española Ayuda Refugiado (2023, February 6). *Caso Tarajal: 15 muertes y nueve años de impunidad*. https://www.cear.es/caso-tarajal/?gclid=Cj0KCQiA-oqdBhDFARIsAO0TrGE3-i6U_HHputM1jDE8aiYuNQIUV_XBqUOSeIxcPgw27QQiOTkGxg38aAj-XEALw_wcB

15 Spanish Ombudsman (2022, October 14). *El defensor avanza sus primeras conclusiones sobre lo sucedido en el perímetro fronterizo de Melilla*. [Press release]. <https://www.defensordelpueblo.es/noticias/sucesos-melilla/>

16 State Prosecutor’s Office, Immigration Unit, Investigation file no. 1/2022, 22, December 2022, p. 36.

In the following section, Morocco will be analysed as a postcolonial case, focusing on colonial history, violence and exception during deportation (Moscoso, 2021).

5. Morocco as a postcolonial case

Morocco was both a Spanish and French protectorate from the beginning of the 20th century (1902) until its independence in 1956. During the Rif war (1921-1927) against the resistance of Abdelkrim El-Ktabi, both colonial imperial powers bombed the region with chemical weapons, breaching the international law in force at the time. The law protected some individuals, but not colonised subjects. During the war, Spain and France used mustard gas against the local civil population, indiscriminately killing unarmed people, including children. As a consequence, still today Riffians have the highest percentages of cancer in Morocco (Mimoun, 2014). Therefore, the consequences of colonial violence can be clearly identified today. “The colonial conquest reveals hitherto unseen potential for violence”, where “the colony represents a site in which sovereignty fundamentally consists in exercising a power outside the law” (Mbembe, 2019, p. 76). Similarly, the Spanish towns of Ceuta and Melilla are strongly connected with colonial history, which predates the Rif War and still today exhibits features of exceptionality in migration control.

Except for the area of Western Sahara, Spanish colonial domination continued during Franco’s dictatorship until 1956. In 1958, Western Sahara was given to Morocco; the area is still today undergoing a decolonising process under the aegis of the UN.¹⁷ The towns of Ceuta and Melilla have been claimed by Morocco as part of its national territory (Mimoun, 2014). These are only some introductory strokes on the Spanish-Moroccan border and its link to colonial history and racist violence, something that remains, especially regarding migration management issues. There are some peculiarities in the relationship between Spain and Morocco when it comes to the unlawful use of violence. The discussion of the cases of some Moroccan nationals who were deported will arguably lead to the conclusion that the use of violence against unarmed Moroccan individuals has persisted over time. Anchored in colonial history, Spanish law has deliberately racialised Moroccans, relegating them to violent and exceptional deportation practices.

According to the Spanish National Institute of Statistics, in January 2022, 776,223 Moroccan nationals were living in Spain, out of a total of 5,417,883 foreigners living in this country. This means that approximately 7% of resident foreigners are Moroccan nationals.¹⁸ Moroccan individuals are the most often imprisoned¹⁹ and deported foreign residents in Spain (Kalir et al., 2021, p. 48). From 2011 until 2020, Spain accounted for more than 50% of the total of Moroccan deportees in the EU (Table 1). Despite this data made available by the EU, there

17 United Nations. The United Nations and decolonisation. *Non-Self-Governing Territories*. <https://www.un.org/dppa/decolonization/en/nsgt>

18 Instituto Nacional de Estadística (2022, June 21). *Cifras de Población a 1 de enero de 2022. Estadística de Migraciones*. [Press release]. https://www.ine.es/prensa/cp_e2022_p.pdf

19 Data on the nationality of people in prisons are in page 64 and in page 68 of the of Spanish Home Office reports 2020, 2021. https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/instituciones-penitenciarias/informe-general/Informe_general_IIPP_2020_12615039X.pdf

is a generalised lack of official data on deportation, and particularly, no information is generally provided on the sex of the deportees, which hinders thorough research on the matter (Fernández-Bessa, 2019, p. 89; Kalir et al., 2021, pp. 219-220). Moreover, deportation figures often refer to irregular migrants, who are not included in official statistics.

Table 1. Eurostat data

Year	EU total deportation figures	Total number of Moroccan citizens deported from the EU	% Moroccan deportees from the EU	Total number of citizens deported from Spain	Moroccan citizens deported from Spain	% Moroccan citizens deported from Spain	% Moroccan deportees from Spain out of total Moroccans deportees from the EU
2011	122520	11835	9.7%	20325	8990	44.2%	76%
2012	131960	12095	9.2%	17520	8365	47.7%	69%
2013	137560	10870	7.9%	16240	7490	46.1%	68%
2014	129155	9265	7.2%	14155	6365	45%	68.6%
2015	155225	8460	5.5%	12235	5840	47.7%	69%
2016	192460	9795	5.1%	9530	5330	55.9%	54.4%
2017	160650	10085	6.3%	10165	5845	57.5%	57.9%
2018	145905	10805	7.4%	11800	6945	58.9%	64.3%
2019	142320	10235	7.2%	11525	6380	55.4%	63.3%
2020	70230	2855	4.1%	4855	1515	31.2%	53%

Source: Developed by the author based on Eurostat data on returns to third countries. This data is not disaggregated by sex. <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

Deportation involves cooperation with third countries, which usually takes the form of readmission agreements (Cassarino, 2010, p. 9). These agreements are often memoranda of understanding, arrangements, pacts and readmission clauses. As they are usually informal diplomatic cooperation or informal arrangements, these kinds of agreements are difficult to monitor, since they are not necessarily published in official journals nor are they always recorded in official documents (Cassarino, 2010, pp. 9-11). In Spain, these types of arrangements evade parliamentary controls and do not appear in the official journal (Iridia, 2020). The consequent lack of clear legal framework facilitates exceptional practices and secrecy during deportation.

Cooperation on deportation with Morocco on Moroccan nationals relies on informal arrangements where the law is either absent or not applied (Iridia, 2020). In this regard, it is often believed that the 1992 Agreement²⁰ regulates deportations to Morocco, including nationals from that country, disregarding the fact that Article 1 of this Agreement states that it does not affect Moroccan nationals. But the only public and official document on the process of deportation of Moroccan nationals is a police arrangement made in 2010 between the two

²⁰ Agreement between Spain and Morocco on movement of people, transit and readmission of foreign nationals who entered illegally, signed in Madrid on 13 February 1992

countries on cross-border police missions.²¹ This agreement established that there would be Centres for Police Cooperation (Art.1) to combat irregular migration (Art.5b) located in Algeciras (Spain) and Tangier (Morocco) (Art.4). While these are the provisions on the deportation of Moroccans, no further information is provided about procedures, methods or safeguards (López-Sala and Godenau, 2017).

Moroccan nationals represent a significant volume of the deportees by the Spanish system; however, these deportations are carried out with no clear legal framework or specific regulations (Irdia, 2020, 2021; López-Sala & Godenau, 2017). Exception is evident when it comes to the deportation of Moroccan nationals, and it is especially visible in the Ceuta and Melilla borderlands. The sovereignty of these towns, as well as the sovereignty of the Western Sahara, have been claimed by Morocco. This political dispute often causes diplomatic confrontations between Spain and Morocco. One of the more obvious examples of exceptionality during the deportation of Moroccans was the event that occurred in Ceuta in 2021, when the leader of the Polisario Front of the Western Sahara was hospitalised there. This was interpreted by Morocco as a political offence, resulting in a diplomatic crisis. As denounced by Amnesty International, in the course of the crisis, more than 8,000 thousand people (including 2,000 unaccompanied minors) illegally entered Ceuta, taking advantage of a temporary lack of border control by Morocco. Migrants were subjected to violence, and more than 5,000 were collectively deported,²² including 55 unlawful deportations of minors (Testa, 2022) by Spanish security forces and the army, which entailed throwing them into the sea at the border between Spain and Morocco.²³

In order to explain those events, the Spanish Home Office Minister, Grande-Marlaska, referred to the 1992 agreement with Morocco as the legal framework that regulates these kinds of deportations. However, this agreement clearly covers other nationals but not Moroccan nationals. These deportations were framed by Grande-Marlaska as an “extraordinary and exceptional situation”.²⁴ These events show that when it comes to racialised groups, exception is presented by the political powers as the norm, and access to rights becomes racialised (Agamben, 2019; Moscoso, 2021).

The next section explores how exceptional practices were employed by authorities for fast-track deportation of six Moroccan nationals after having been tricked by the Spanish National Police. The six collected testimonies serve to shed light on the connection between racism, exception and violence over racialised groups (Wake & Kazami, 2020).

21 Agreement between the Government of the Kingdom of Spain and the Government of the Kingdom of Morocco on cross-border police cooperation, entered into “ad referendum” in Madrid on 16 November 2010

22 This practice is prohibited by Protocol 4, Art. 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS

23 International Amnesty (2021, May 19). *Spain/Morocco: migrants subjected to violence and used as 'pawns' at Ceuta border*. [Press release] <https://www.amnesty.org.uk/press-releases/spainmorocco-migrants-subjected-violence-and-used-pawns-ceuta-border>

24 La Moncloa (2021, May 28) *Press release after the Minister Council: María Jesús Montero y Fernando Grande-Marlaska* [Press release] <https://www.lamoncloa.gob.es/multimedia/videos/consejoministros/Paginas/2021/180521-cministros.aspx>

5.1. Experiencing fast-track deportations

Little academic research has been conducted on fast-track deportations in Spain (Barbero, 2018, 2021; Fernández-Bessa & Brandariz, 2016, p. 14; López-Sala & Godenau, 2017). This might be due to the lack of information and secrecy, the speed with which they are enforced, and the false pretences used by National Police officers to detain deportees, which makes analysis difficult. All the interviews conducted within this study were fast-track deported under false pretences by Spanish National Police. This kind of deportation, as it will be illustrated by the testimonies, makes racialised people physically disappear from one day to the next; they are no longer at their places of residence (even if in prison) as bare life, with no punishment (Agamben, 2016).

The law does not regulate fast-track deportation, it is a practice established in Spain since 2013 (Barbero, 2018; SJM, 2014). Moreover, this practice is not subject to any judicial control and is framed by the absence of law or exceptionality. As it will be shown below, the absence of law within this kind of deportation has practical implications and occur within high levels of discretionary power (Kalir, 2019). Fast-track entails the enforcement of deportation by the Spanish National Police in under 72 hours. This modality of deportation by-passes migrants' internment in a CIE either directly from police stations or from prison gates as soon as the relevant judgment is issued (Barbero, 2018; Irídia, 2020; SJM, 2014).

All interviewees have been living in Spain for more than ten years and had completely served their prison sentences before being deported; they were therefore doubly punished as racialised groups (De Genova, 2018; Fanon, 1952, 1965; García-España, 2017, 2018; González-Sánchez, 2015; Mbembe 2011, 2016; Mellino, 2019). In fact, in 2014, some reports on the matter stated that “police practices involving deceiving or tricking foreign nationals into attending police stations to have them expelled should cease” (SJM, 2014). However, still in 2020, fast-track deportations represented 62% of the total, whereas 38% of deportations were arranged from a detention centre (El País, 2021). The increase of fast-track deportations over time in comparison with other procedures means that fast-track deportation can be regarded as a characteristic of Spanish Departed.

In the cases studied here, three of the subjects were deported from prison (I3, I5, I6) and the other three from a police station (I1, I2, I4). In the first method, police officers were waiting at the entrance of the prison in order to detain and deport them immediately after their release. The second method involved Spanish National Police officers requiring non-nationals whose residence permits had expired, or who had an expulsion order pending execution, to appear at the police station (Barbero, 2018; García-España, 2017, 2018). They demanded that these individuals bring with them certain documents to secure their legal status. However, once at the police station, they were arrested and immediately deported. In other words, the police lied to them, detained them, and deported them to Morocco without giving them the opportunity to confer with a lawyer.

Yassin (I2) was deported in 2019, after having completed his prison sentence. He was given an appointment to appear at the police station in Aluche under the pretext of securing his administrative status. The case of Yassin²⁵ (I2) is extreme. Despite having been born and raised

25 Yassin expressed his desire to be mentioned by name and for reference to be made to his music project, 'Illegal': <https://www.youtube.com/watch?v=JqCPcgtfnp8>

in Madrid, he was subject to fast-track deportation to his parents' country, Morocco. He was only able to call his mother to tell her that he was going to be immediately deported. This is what Kalir (2019) identified as psychological violence, which affects not only deportees but the whole of their family. His mother was not allowed to visit him or give him money, documentation or clothes at the police station. He only had his Spain-issued foreign national identity card for residents and was not able to take any other documentation. Once in Morocco, he managed to obtain some help and was able to return to Spain *illegally*. A few months later, he was identified and transferred to a CIE in order to be deported again. However, he was released when enforced deportation became impossible due to the closure of national borders during the pandemic.

At the moment of their deportation, Mahmoud (I3), Amine (I4), Samir (I6) were married to Spanish residents and had children under the age of 18 who had Spanish nationality. Youssef (I1) and Taha (I5) had studied at Spanish schools because they had migrated when they were very young. Yassin (I2) was born in Madrid and therefore went to school there. Three of the interviewees, Amine (I4), Taha (I5) and Samir were in the open prison regime (third degree of the Spanish imprisonment regime) at the time when they were deported. At the time of the interview, all of them expressed their desire to return to Spain, where their lives were and were planning ways to achieve this. Except for Youssef (I1), Yassin (I2) and Taha (I5), they (I3, I4, I6) were working at call centres in Tangier thanks to their good knowledge of Spanish and because this enabled them to be closer to Spain. Before their deportation, none of them were able to speak to their families or prepare documents or money for their arrival in Morocco. They could not even say goodbye to their families. Youssef (I1) was interviewed in Rabat. He was saving some money to return to Spain after his deportation. He had been deported from a police station after completing his prison sentence. The police had made him attend an appointment at the station, supposedly to arrange some documentation issues. He had been deported more than once and was planning to pay a smuggler to come back to Spain, where he had resided for more than 20 years.

Like the case of other deportees, double punishment and exposure to violence are visible in the case of Amine (I4) a 42-year-old man who was 12 when he arrived in Spain. Today he has a 14-year-old son who lives in Madrid. Amine had the same problem when his residence permit was blocked while he was in prison; he was made to travel all the way to Algeciras in handcuffs and subsequently deported. Similarly, Taha (I5) arrived in Madrid when he was 15 years old. When he voluntarily went to sign the documents to have access to the open prison regime, he was arrested, handcuffed, and taken in a car to Algeciras, to be deported in less than 72 hours. He left behind his mother, his two brothers and his four-year-old daughter. His was a fast-track deportation directly from prison, a process in which he had no time to say goodbye or the opportunity to avail himself of any legal assistance.

Samir (I6) was taken from a Madrid prison to Cadiz in a car with two National Police Officers and directly deported. Samir (I6) had been misled by the police, who told him that he had to renew his residence permit as soon as he was released from prison. The police told him that they were on their way to attend his hearing and resolve his case. Instead, he was taken to a police station under arrest for one night in the same space with eight Moroccan men who were also going to be deported. The following day, they all crossed to Ceuta in handcuffs in a commercial ferry together with regular passengers. Samir (I6) spent three days in the police station at the border, but he never knew why. During that period he could not communicate with his family, who were extremely worried about him.

Kalir (2019, p. 20) stated that *Deapartheid* is achieved by the deployment of violence (De Genova, 2018). These police practices are carried out in a context where exceptionality is the norm, where individuals are subjected to high levels of psychological and physical violence (Kalir, 2019). This is illustrated, for example, by the anguish that families and deportees face when no information is made available to them, either prior to or after deportation. Mahmoud (I3), a 20-year-old man, was deported directly from the entrance of the prison after completing his sentence. After his residence permit was blocked, the police gave him an “expulsion order” while he was in prison, and he was unable to secure his administrative status because he was not allowed to appear before the authorities to formalise it. On the last day of his prison sentence, National Police Officers were waiting for him at the entrance to the prison and he was directly deported to Morocco in front of his wife, who was waiting for him there. He has two children in Spain and his wife is in Madrid, but he could not say goodbye to them, as nobody informed him that he was being deported. Before placing him in the police car, he was told that he would be attending a hearing to secure his residence status. However, this was not true, and he was eventually deported. He has been unable to make a formal complaint about what happened to him, as he is currently in Morocco. Framed by exception, impunity and violence, no one is usually held responsible for these practices, because it is extremely complicated and expensive to seek justice from another country.

Once in Morocco, deportees find themselves in a very difficult situation, due to the speed of their deportation process. They have no credit card or even their relatives’ telephone numbers to resort to them for support. They often find themselves far away from their (or their relatives’) places of origin. This was particularly difficult for Yassin, because he had never lived in Morocco before; the country is unknown to him. As was the case for other deportees, once in Morocco, Yassin (I2) was released outside the police station in Nador. He was left on his own, with no telephone, no money and no change of clothes. The only person he knew in Morocco was his grandmother, who lived in Rabat, approximately 500 km from Nador. Given his situation, he decided to go back to Madrid. He managed to do it by using the residence permit that he had been able to hide in his clothes when he was detained.

As a consequence of the speed, secrecy and lack of information, they cannot even communicate with their families before being deported, nor can they arrange their personal affairs or take money with them before their displacement (I1, I2, I3, I4, I5, I6). It is difficult to monitor these practices because after deportees are no longer in the country, they are often not willing or able to file formal complaints. It should be noted that police practices use secrecy and speed to circumvent legal procedures and safeguards during deportation. As stated by Fanon (1952, 1965), (post)colonisation and violence are connected (Mbembe, 2011, 2016). When it comes to racialised groups (El Enany, 2020), exception comes up as the norm (Agamben, 2016, 2019). *Deapartheid* is violence exercised against both racialised deportees and their families (De Norona, 2019; Kalir, 2019).

6. Conclusions

Biopolitical approaches to migration rely on concepts like exception, inclusive exclusion or bare life in order to understand migration policies (Agamben, 2016, 2019; Foucault, 2000, 2012). Although these concepts are useful for the study of borders, biopolitical approaches have been criticised for failing to take into account racism and the colonial history of domi-

nation. However, in combination with postcolonial perspectives, they can prove to be highly informative in understanding the Spanish deportation system.

Postcolonial approaches have contributed to the inclusion of the colonial history of domination and racism in the analysis of migration. Franz Fanon's conceptual developments on racism and violence, together with Mbembe's necropolitics and the idea of coloniality are fundamental in order to acknowledge racism as an inherent feature of the EU's and Member States' migration policies. These perspectives have shown that (1) racist colonial logics have influenced the shaping of present legal frameworks and practices of deportation, contributing to the racialisation of certain groups; and (2) there is a structural mistreatment of some migrant population groups, who are exposed to higher levels of violence and are more likely to die, especially during detention and deportation (Kalir, 2019, p. 20).

The Spanish deportation system is characterised by similar features as those seen in other EU countries. These common features are associated with the reproduction of logics and practices of colonial management of non-white racialised populations. Deportation is one of these practices which are anchored in colonial logics and practices. These generalised and institutionalised deportation regimes are a continuation of colonial violent devices used against racialised groups.

The Spanish deportation system is in line with the definition of *Departheid* provided by Kalir (2019). *Departheid* in Spain entails violent exclusion and may result in death during detention and deportation. Since Spain's entry into the EU, Spanish law has embraced colonial racism, creating hierarchical categories that contribute to the racialisation of deportable and imprisonable people. Racialisation in Spain determines different levels of access to rights and the exposure to detention, deportation and death. This article has shown how the development of law and practices have contributed to the installation of *Departheid* in Spain and how the regular occurrence of racialised death during detention and deportation is met with exception and impunity.

Spain has significant ties with Morocco, firstly because of the geographical proximity between the two countries and secondly, because of the colonial history of domination. The inclusion of the colonial history of domination in the analysis makes it possible to identify the persistence of features of the protectorate, the absence of law when interacting with unarmed Moroccans, the use of violence and the recurrence of impunity and exception. Spain deports more Moroccan nationals than any other country in the EU. In addition, more Moroccans are deported from Spain than any other nationals. These deportations occur in an ambiguous legal framework. This paper has provided evidence that Spain's deportation system inflicts racial, psychological and physical violence on racialised Moroccans within a context of exceptionality. This means that, despite the existence of relevant laws, exceptionality, the violation of rights, death and violence are regular practices when it comes to racialised groups in detention for the purposes of deportation.

Spanish *Departheid* also exhibits particularities such as fast-track deportation practices, characterised by the lack of a clear legal framework, speed, secrecy and exception in order to circumvent the rights of deportees. These testimonies have contributed to providing evidence of the connection between racism, exception, violence and death in Spanish *Departheid* perpetuating colonial violence. The six testimonies collected in this study show how deportation violently destroys life projects and sometimes families, as they affect not only deportees but their loved ones as well. Exception and the violation of rights are extremely difficult to identi-

fy and monitor during deportations, particularly when they are secretly enforced in less than 72 hours. Legal safeguards are often not respected, but even if the process is conducted in line with applicable laws and regulations, it regularly entails the use of violent practices. The deportations of these Moroccan nationals illustrate how, when abusive practices are framed in a context of exceptionality, it is usually difficult to prove their existence and to bring those responsible to justice.

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Annexe 1. List of Interviews

Code	Interviews	City	
I1	Youssef	Men with Moroccan nationality deported from Spain to Morocco	Rabat Deported from police station by plane and bus via Melilla to Nador
I2	Yassin ²⁶	Yassin; born in Madrid; 25 years old; Men with Moroccan nationality deported from Spain to Morocco and detained in detention center in Madrid.	Madrid Deported from police station by plane and bus via Melilla to Nador
I3	Mahmoud	48 years old; Men with Moroccan nationality deported from Spain to Morocco	Tanger Deported from prison's entry in ferry from Algeciras to Tanger
I4	Amine	42 years old; Men with Moroccan nationality deported from Spain to Morocco and detained in detention center in Madrid	Tanger Deported from police station by ferry from Algeciras to Tanger
I5	Taha	29 years old; Men with Moroccan nationality deported from Spain to Morocco	Telephonic Deported from prison's entry by ferry to Algeciras o Tanger
I6	Samir	27 years old, men with Moroccan nationality deported from Spain to Morocco	Tanger Deported from prison's entry from Madrid to Algeciras in Police car and then in Ferry to Tanger
6	TOTAL		

26 All the names are fiction except Yassin who have express his desire to appears with his real name.