



World Justice
Project

FAILED JUSTICE

PREVALENCE OF TORTURE IN MEXICO'S
CRIMINAL JUSTICE SYSTEM



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**“They told me they were going to kill me (...),
that my family wouldn’t find the body.
In other words, they were going to dump me
in some field, at the side of the highway,
floating in a river.
I took the blame when they had me completely naked
with a bag over my head so that I couldn’t breathe.”¹**

EXECUTIVE SUMMARY

This World Justice Project report analyzes quantitative evidence concerning the cases of thousands of people who are victims of torture or ill-treatment in Mexico when prosecuted in criminal justice systems. Furthermore, it exhibits qualitative proof in the form of in-depth interviews with different procedural stakeholders. The purpose of this analysis is to use quantitative data to illustrate the extent of the prevalence of torture or ill-treatment throughout the different stages of the arrest or detainment process, criminal investigation, accusation and sentencing. Qualitative research contributes additional analytical elements to address the hypothesis of this research.

The data suggests very convincingly that this type of violence perpetrated by agents of the state principally takes place because diverse authorities believe that by using torture, they will obtain valid evidence to solve a crime. In second place but to a lesser extent, torture is used for the purpose of social control or punishment in the prison system.

The starting point for the World Justice Project team to conduct this analysis is statistical evidence. A sample of 51,658 cases of individuals deprived of their freedom is used. These people were arrested between 2006 and 2016, interviewed by the National Institute of Statistics and Geography (INEGI: *Instituto Nacional de Estadística y Geografía*) using the National Survey of People Deprived of their Freedom (ENPOL: *Encuesta Nacional a Personas Privadas de la Libertad*). This sample is representative of a population of 187,784 individuals who were deprived of their freedom. The survey contains data concerning people whose criminal persecution resulted in pretrial detention or a final conviction punishable by imprisonment. The ENPOL shows the other side of the coin because it reveals who is in prison in Mexico and the course of action that led to their incarceration. The survey is based on a random sample of individuals from different federal states and prisons.

¹Person deprived of his freedom (PDF) 7 interviewed by Roberto Hernández in prison. Anonymized and non anonymized transcription in the World Justice Project database.

The main findings of this report are:

1. The prevalence of torture is systematic and socially relevant:

The data show that 78 percent of the total prison population had suffered some kind of ill-treatment or torture; in other words, 7 of every 10 inmates were victims of this type of violence. The systematic nature of illegal violence inflicted by agents is even worse when we consider that less than 10 percent of these crimes are investigated. This suggests that those who perpetrate acts of torture or ill-treatment do not face the real threat of being investigated or criminally punished; in other words, there are no serious incentives to prevent them from these practices.

2. Why does torture exist in Mexico?

There are two main reasons for torture in Mexico: obtain evidence proof of the commission of a crime or to identify the person responsible and to exert control over individuals who have been taken into custody and already have been deprived of their freedom. The frequency of torture increases when both of these, the securing of evidence and the subjugation of a person, coincide; for example, when an individual is held in custody.

Obtaining evidence by torture or ill-treatment occurs principally at two times, one of which is during arrest and in transit. For example, 93 percent claimed to have been subjected to pressure during their interrogation (Table 2), and 73 percent respondents of those interviewed or interrogated by the police were tortured or ill-treated.

Moreover, unjustified detentions have a greater incidence of torture or ill-treatment. For example, 72 percent of respondents reported having been tortured or ill-treated during their detention whether taken into custody on the street or in a private premises without an arrest warrant (82 percent) or because they were in *flagrante* (caught in the act of committing an offense) (69 percent) (Graph 11). Irregularities during detention are also associated with practices involving torture or ill-treatment; for example, when coercive force is used, when the authorities do not identify themselves or when the time taken to transfer the detainee to the Public Prosecutor Office is longer than necessary.

The second time when most acts of torture or ill-treatment take place is during the time spent at the Public Prosecutor Office. This data is based on a variety of findings; for instance, 66 percent of the total number of people interrogated by public prosecutors were tortured or ill-treated (Table 3); 40 percent of those who confessed their guilt were tortured or ill-treated (Graph 5A); and 83 percent of those accused were pressured to change the version of events they gave in their statements. For their part, statements given to the public prosecutor wherein a detainee accuses someone else are the product of violence as 95 percent of them did so as a result of torture or ill-treatment (Table 6).

Torture and ill-treatment for the purpose of social control occurs when people have already been deprived of their freedom. It was found that, in prison, the use of solitary confinement for more than 15 days is the most prevalent form of ill-treatment when compared to other irregularities such as beatings, threats and extortion (Graph 9).

3. Consequences of torture

The prevalence of torture increases the possibility of innocent people serving a sentence unfairly since the Prosecutor's case is fundamentally sustained on the evidence collected at the two above mentioned times -arrest/transit and when in custody-. In the case of 72 percent of the people interviewed, the statements and interviews given by the accused and witnesses were the evidence analyzed by the judge (Graph 3). Evidentiary value at trial fails to consider that the reliability of this evidence was discredited by the abuse suffered by individuals who were arrested and interrogated.

The violence and the harm caused in consequence have not been quantified in spite of recorded evidence of the most common forms of torture, namely threatening to file false charges, undressing and blindfolding detainees. These forms of torture are equally common among men and women; however, data underscore the prevalence of sexual violence against women (Graph 8). The seriousness of the harm, suffering and pain generated by torture or ill-treatment foresees the need for ENPOL surveys to ask whether the interviewee is suffering from post-traumatic stress for the purpose of recording and accounting for the consequences of torture.

The prevalence of torture and ill-treatment practiced by State agents incites corruption as it is associated with negotiations with detainees either to release them or to continue processing them. The data also suggest that torture and ill-treatment practices are normalized inside State corporations.

4. Light at the end of the tunnel: what to do with these findings

Most police investigative procedures lack any kind of standardized guidance, which affords them unbounded discretion. The data in this report corroborate that there is greater prevalence of torture or ill-treatment in the case of practices not regulated by standardized constraints to be complied with in court. This includes the time taken to transfer detainees, where they are to be taken and how long they must remain at the Public Prosecutor Office.

This finding underscores the urgent need to establish clear rules and regulations which, on the one hand, provide guidance for those investigating crime and, on the other, limit the boundaries of discretion with a view to reduce the frequency of torture and ill-treatment. If it is desired to change the behavior of State agents, namely municipal or preventive police and judicial investigative police, in most of the cases reform efforts must first focus on the police institutions that detain most people.

It was found that when existing legal protection is effective, such as access and confidential communications with a lawyer when first detained, the right to contact family or to have a medical exam, there is lower incidence of torture or ill-treatment.

This series of findings taken together suggest a clear public policy direction: the creation of clear rules, and compliance with existing procedural rules mitigate the prevalence of torture or ill-treatment.

The contrast the report presents between the previous inquisitory justice system and the current adversarial system underscores the fact that the safeguards inherent in the current system inhibit torture and ill-treatment. These improvements, although still marginal, are evident in less use of physical violence during detainment, lower periods of time for transfer to the Public Prosecutor Office or more cases where agents identify themselves.

Finally, this report concludes with a series of recommendations or good practices that may be implemented to face up to the prevalence of torture and ill-treatment, thereby mitigating the consequences and harm attributed to the Mexican justice system.

INTRODUCTION

The objective of this report is to provide reasoned evidence that torture is dysfunctional for the purposes of criminal proceedings and for social control sought in this illegal manner. The aim is to present simple reasoned evidence, albeit not conclusive, of several hypotheses that are explicitly and clearly laid out throughout the document. The World Justice Project's objective is to present a comprehensible proposal with interpretable results for everyone, even those without a background in statistics. The team is aware that there exist other more in-depth analyses; for example, multivariate analyses that are both necessary and desirable, but this report's objective is to keep the presentation simple given the broad audience to which it is addressed.

Using the quantitative and qualitative data this report is based on, the evidence is classified as showing either torture or ill-treatment, on the understanding that the definition of "ill-treatment" for practical purposes encompasses the legal concept of inhuman, cruel or degrading treatment.

The main approach of the report has to do with torture as a method of criminal investigation. Its aim is to review the use of illegal violence to obtain incriminatory evidence in Mexico. It is fundamental to detonate a debate concerning how to reform the public policy that regulates the three investigative practices that generate most of the evidence used in criminal proceedings in Mexico: the inspection of people and private premises; detainee and witness interviews; and witness identification of suspects in a police lineup.

In addition to statistical data generated by ENPOL, this document contains textual citations from interviews with torturers and the victims of this crime that reveal how, in other countries and in one Mexican municipality, they have managed to eradicate torture without hindering successful criminal investigations. This is possible by having the police adopt professional practices in three investigative acts: searches, interviews and identification lineups.

Given that the evidence obtained in these acts is that most commonly used in the criminal proceedings and, at the same time, is that most commonly obtained by illegal violence, this is where public policy efforts must be focused to prevent and mitigate the prevalence of torture.

ENPOL data do not provide a full description of the actual investigative act. In other words, a metric of illegal violence can be generated, but precise details of the investigative act in question that unfailingly guided the justice system either to a correct outcome or led it into legal error remain unknown.

The hypothesis of this research is that torture (illegal violence) aims at producing incriminatory evidence and that it is basically used during these investigative acts. In other words, although torture may also take place in other contexts, this report presents quantitative evidence of the levels of violence that occur during these acts and, therefore, shows the need to establish obstructive standards; that is to say, standards that prevent the very existence of ill-treatment. Moreover, it also highlights the need of changing attitudes through sensitivity, professional training and legal culture within a judicial framework based on the rule of law.

In 2014, Juan Méndez, the United Nations Special Rapporteur on Torture, made an official visit to Mexico to evaluate the prevalence of torture and cruel, inhuman or degrading treatment and to cooperate with the government on its prevention and eradication. Having completed his investigation, he concluded that “torture is widespread in Mexico. It occurs mainly when suspects are first detained until they are brought to justice for the purposes of punishment and investigation” (United Nations, 2014: 2).

Méndez emphasized that the number of investigations into cases of torture does not coincide with number of testimonies and complaints. Neither then chancellor José Antonio Meade nor the Minister of the Interior accepted Juan Méndez’s conclusions. Both claimed that torture is an isolated phenomenon in Mexico and, even though they did acknowledge the existence of torture, they dismissed the conclusion that torture is widespread. The matter developed into a public dispute that ended with the expulsion of Juan Méndez from Mexico, and exposed the need for better data.

Five years have passed since that confrontation. Thanks to the INEGI’s ENPOL data, there is a large amount of quantitative evidence available to demonstrate the prevalence and nature of the torture phenomenon in Mexico that Juan Méndez mentioned. Furthermore, it counters Meade’s statement concerning data insufficiency and uses this new data to submit empirical evidence to the effect that torture is a widespread practice in the Mexican criminal justice system.

The first part of the report analyzes the problem of determining the true extent of torture or ill-treatment in Mexico. Later, the second part presents the ENPOL data that make it

possible to elucidate the reasons for torture, in addition to data that reveal in which places and at which stages of the criminal proceedings there is greater prevalence of torture or ill-treatment. Thereafter, ENPOL data are used to identify the prevalence of torture or ill-treatment by type of authority. Even though ENPOL data do not show precisely who commits these crimes, they do identify the procedural stages, physical spaces and the main participants for each situation.

The fourth part of the report, documents the findings on torture based on ENPOL data and qualitative data collected in interviews with policemen, justice system operators and victims stored on the databases created by the World Justice Project team between 2015 and 2019. Finally, public policy recommendations for the prevention, mitigation and eradication of torture or ill-treatment in Mexico are presented.

TORTURE IN MEXICO

Torture as a criminal investigation method

The Political Constitution of the United Mexican States sets forth an abstract definition in Article 22 as follows: “the death penalty, mutilation, infamy, branding, scourges, sticks, torture of any kind, excessive fines, confiscation of property, and any other forms of unusual and transcendental punishment are hereby prohibited. All punishment must be commensurate with the crime it sanctions and the legal asset in question.”

Based on this regulatory foundation, Article 3 of the Federal Act to Prevent and Punish Torture — Regulatory law for Constitutional Article 22— defines torture thus: “public servants have committed the crime of torture when, in the exercise of their duties, they inflict pain or serious suffering, whether physical or mental, on others for the purpose of obtaining information or a confession from the tortured or a third party, or of punishing said person for an act they have committed or are suspected of having committed, or of coercing them to adopt or abandon a determined mode of conduct.”

The definition of torture in Mexican law stipulates the last two objectives of this illicit act, which are analyzed in this report: as an unlawful manner of obtaining criminal evidence, of coercing a suspect into self-incrimination and as a punishment and social control mechanism. Furthermore, Mexico has ratified the principal conventions on this matter, including their protocols, in both global and inter-American settings.

In particular, Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that “all State parties shall undertake to prohibit any territory in their jurisdiction from other acts that constitute cruel, inhuman or degrading treatments or punishments that stop short of being torture.” Torture and cruel, inhuman or degrading treatments or punishments (hereinafter ill-treatment) are different phenomena but are indistinguishable in practice. The main consequence of this is that this report will refer to both phenomena taken jointly. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CCT), in general comment number 2, stipulated that obligations to prevent torture or other cruel, inhuman or degrading treatments or punishments are indivisible, independent and interrelated, and stipulated that:

The obligation to prevent ill-treatments in practice coincides with the obligation to prevent torture and largely encompasses it [...] In practice, the conceptual boundaries between ill-treatments and torture are not usually clear. Experience has shown that condition giving rise to ill-treatments usually facilitate torture and, in consequence, measures required to prevent torture must be implemented to prevent ill-treatment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and that its prevention should be effective and imperative (Added emphasis.)²

As can be appreciated, torture and ill-treatment are two interrelated phenomena. According to the Inter-American Court of Human Rights, the criteria that is critical to distinguishing between torture and ill-treatment relate to the intensity of the suffering. Given that every human being has a different pain threshold, the intensity of human suffering is relative and, therefore, distinguishing between torture and ill-treatment requires a case-by-case analysis.

As in other countries, torture and ill-treatment are prohibited in the Mexican Constitution and several regulatory laws. Mexico has subscribed international treaties to prevent, investigate, sanction and redress torture and ill-treatment, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture and the UN Optional Protocol to the Convention against Torture.³

As stipulated in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CCT), torture is deemed to be any act that causes others pain or serious suffering (physical or psychological) to get information or a confession, to punish them, to intimidate or coerce them, or for any other reason based on some kind of discrimination, when these pains or sufferings are inflicted, caused or permitted by people exercising their public duties.

According to the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acts of torture could be committed by public servants or private individuals. Article 24 of this law stipulates that:

A public servant has committed the crime of torture when, with a view to obtaining information or a confession by using intimidation, personal punishment, coercion, preventive measures, discrimination, or any other, he or she:

- i) causes someone physical or mental pain or suffering*
- ii) engages in behavior aimed at or capable of diminishing or negating the victim's personality or physical or mental capacity, even though this may not cause pain or suffering, or*

²<https://www.acnur.org/fileadmin/Documentos/BDL/2012/8782.pdf> consulted on September 20, 2019.

³(Suprema Corte de Justicia de la Nación, s.f.) (ONU, 2014; Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (OACNUDH), s.f.) (ONU, s.f.)

iii) performs medical or scientific procedures on someone without the consent of said person or whosoever may be entitled to give it.

Article 25 of the same law stipulates that:

An individual has committed the crime of torture when he or she:

- i) with the authorization or agreement of a public servant, engage in any of the behaviors mentioned in the previous article, or*
- ii) with any degree of authority or participation, intervene by engaging in any of the behaviors mentioned in the previous article.*

However, the same law only contemplates the possibility of public servants being involved in cruel, inhuman and degrading abuse or punishment as can be appreciated in Article 29. The legislation stipulates that this ill-treatment occurs when a public servant, in the performance of his or her duties, slanders, mistreats, degrades, insults, or humiliates someone as an intimidatory measure, as punishment or for any discriminatory reason.

The foregoing shows that, even if an attempt has been made to distinguish between acts of torture or ill-treatment, their closeness makes it hard to define a conceptual difference. Therefore, as mentioned above, the analysis will include and consider both aspects jointly.

Leaving the conceptualization difficulties aside, the main problem as far as documenting the existence of torture and ill-treatment in the Mexican criminal justice system is concerned has been the difficulty of producing precise, reliable statistics since torture and ill-treatment are illegal practices and its perpetrators work behind closed doors.

Traditionally, the information sources used to quantify this phenomenon have been the number of complaints registered, pre-trial investigations, case files, arrests, reports made to human rights organisms and court decisions handed down. However, the use of these sources has resulted in a serious under-reporting of the phenomenon.

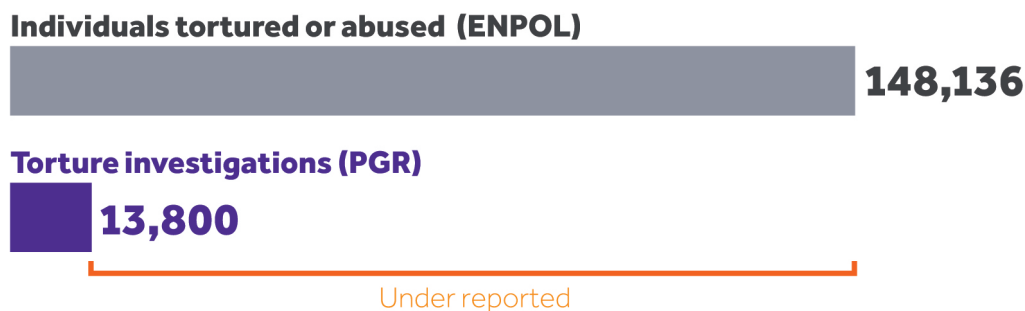
For example, according to the “Basic Manual for Understanding the General Law Against Torture”,⁴ from 2006 to 2016 the The Attorney General’s Office (PGR: *Procuraduría General de la República*) conducted 13,850 investigations on torture, but there were only 31 convictions for torture during the same period. In contrast, according to the analysis presented in this document, 148,136 individuals experienced some kind of torture or ill-treatment during their arrest, transfer to or detention at the Public Prosecutor Office during the same period.

⁴https://www.hchr.org.mx/images/doc_pub/Guia_Tortura_14.pdf consulted September 2019.

GRAPH 1

MEXICO, 2006-2016: NUMBER OF CASES OF TORTURE OR ILL-TREATMENT

TAKEN FROM DIFFERENT DATA SOURCES



Sample: 187,784 persons deprived of liberty who were arrested from 2006 to 2016.

184,037 persons deprived of liberty who were taken to the public prosecutor's office from 2006 to 2016.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty and the State Department of the United States of America, Mexico 2017: Human Rights Report.

The majority of the cases of torture take place during the criminal investigation and their objective is to obtain incriminatory evidence (Alston and Goodman, 2013: 265-276). This report reveals the prevalence of illegal violence experienced and witnessed by interviewees. Based on their testimonies, it is assumed that there is greater or more frequent violence during the criminal investigation than in prison. However, due to the fact that the data measure different years and different types of violence, it is not possible to make a direct comparison.

What happens during three particular acts of investigation is particularly worrying: the inspection of people and private premises; detainee and witness interviews; and witness identification of suspects in a police lineup. Therefore, special attention must be paid to those acts of investigation as analytical categories; the places the acts occur is less relevant, whether at the time of detainment or during processing through the Public Prosecutor Office.

Moreover, as demonstrated throughout this report, the target of violence is not the accused person alone but also the witnesses used to file the charges, as well as people close to the individual being investigated. Understanding torture as an illegal investigative method is important because it is directly related to the concern felt by most Mexicans about high levels of impunity in the event of serious crime.

Graph 1 shows why the study of the prevalence of torture among those deprived of their freedom in Mexico is systematic and relevant; it concerns a population group that has had direct experience of the justice system (some of them, the repeat offenders, are even over-exposed to the legal process). The survey documents data supplied by informants —people deprived of their freedom— who have first-hand knowledge of interrogation processes, detention, confession, sentencing and life in prison. Furthermore, Graph 1 shows that the case files or pre-trial investigations into torture opened by the PGR between 2006 and 2016 do not even represent 10 percent of the prevalence of this crime.

Jana Asher, in her seminal book on statistical methods of collecting social data on human rights, studies the challenges of using quantitative statistical instruments to identify serious human rights violations in non-developed countries (Asher, *et al.*, 2008: 24-25). The author is of the opinion that finding a case of torture using a statistical instrument applied to an open population (for example, a home survey) is akin to finding a needle in a haystack. The advantage of using ENPOL data on torture for investigative purposes is that the non-response rate is considerably lower than the average survey given to the open population and allows for the acquisition of information provided by interviewees that have had greater exposure to torture.

The belief that torture is an effective criminal investigation method

There is widespread belief and trust, unfounded but sincere, among criminal justice system operators in Mexico in the usefulness or effectiveness of violent methods of evidence extraction. Given the size of the phenomenon, it is evident that torture enjoys the support of the leaders at justice and public safety institutions since different studies (Naval and Salgado, 2006; United Nations, 2014; Human Rights Watch, 2011, 2014 y 2017; Amnesty International, 2015) have documented that torture has been internalized and normalized in Mexico as an operating procedure used by the police, the armed forces and personnel of the Attorney-General's office.

For their part, Mexican citizens are divided on the issue. Even though there exists social rejection of torture, a large percentage of the population is willing to allow it to continue if it could guarantee the solving of serious crimes. For them, harming others needlessly is not the principal objective of torture practices but obtaining a strategically-valuable outcome in terms of criminal prosecution: the acquisition of confessions or statements from others to successfully prosecute someone at a criminal trial.

In the latest National Constitutional Culture Survey (2016) conducted by the Legal Investigations Institute at the National Autonomous University of Mexico (UNAM: *Universidad Nacional Autónoma de México*), interviewees were asked "if the police know that a detainee raped a woman but do not have enough evidence, do you agree or disagree with the use of torture to make him confess?" In their answers, three out of ten of those interviewed stated that they "agreed" with torturing the suspect to make him confess. In contrast, almost half of those surveyed said they "disagreed" with this practice. It is interesting to note that two out of ten interviewees spontaneously replied that they "partly agreed" (Fix, Flores and Valadés, 2017: 87).

After five years of doing field research with criminal justice systems operators and victims in Mexico, the World Justice Project team has documented repeated testimonies that, in the event of kidnapping, report how beatings and torture made the detainee confess and led to discovery of the whereabouts of the kidnapping victim. In these cases, the authorities have come to the

conclusion that torture works. However, this kind of anecdotal evidence is insufficient to solidly state that torture makes criminal investigation more efficient.

The costs of torture as a criminal investigation method

ENPOL's statistical data provide important evidence of the possibility that torture or ill-treatment occurs in Mexico in such a way as to increase the frequency of innocent people being incarcerated, something that in statistics is known as false positives. This is inferred from the admission of guilt or innocence of the people deprived of their freedom when they fill out the statistical survey. In other words, the criminal justice system identifies people as guilty when they are not, which does not help reduce the levels of violence and impunity in Mexico.

To that effect, the statistical data analyzed suggests three prevalences: first, that criminal justice system operators give the same treatment to two populations, one guilty and the other innocent, without being able to distinguish between the two. Secondly, the quantitative evidence shows that it is more common for people who are not guilty and are tortured to confess than people who are guilty and not tortured. Thirdly, in the event of torture, the cases become weak.

Concerning the weakness in cases, at the time of the completion of this report, the Mexican federal justice system had just released dozens of people linked to the disappearance of the 43 primary school teachers in Ayotzinapa. The principal argument supporting the federal judge's decision was the evidence of torture in the respective cases. The decision was contested by Alejandro Encinas, Under Secretary of the Interior, who declared the judicial decision to be unfair. This landmark case serves as an example of the kind of vulnerability that torture brings to criminal prosecution, even in high-profile cases for the Mexican government, in addition to the tacit acceptance of torture as a means of uncovering the guilty.

In other words, the fact that there are few convicted criminals who report torture could explain why there are some people who successfully reported they had been tortured and who were released. In addition, the same data reveal that torture is associated with less harsh sentences. Suits of amparo and appeals are more commonly filed when the person was tortured. One of the motors driving legal disputes against decisions made by first instance courts is torture. Evidence suggests that the most vulnerable cases are torture related.

In addition to annulling its own objective of efficient prosecution, torture has a corrupting effect on the police. Inside police organizations, an order to commit one illegal act leads to further unauthorized illegal acts being committed (Bayley, 1994: 42). The same ENPOL data indicate that 8 percent of the prison population are former policemen, soldiers or marine soldiers, which accounts for a very high percentage of the prison population. These may be police or military officials who took a wrong turn somewhere along the way or public officials who were convicted of having used illegal violence against those presumed guilty. In broader social terms, the illegality of investigative acts erodes the legitimacy and credibility of the military and police forces.

One unexpected effect of torture is its capacity to prevent people from joining police institutions. In addition to the threat of physical injury associated with police work is the risk of being incarcerated for taking part in illegal acts “ordered by higher ranking officers who take no responsibility for them”.⁵

In essence, illegal violence due to torture is dysfunctional for the purposes of criminal investigation. First, it increases the possibility of releasing individuals who are guilty of crimes by allowing innocent people to confess offenses they did not commit. Second, torture gives rise to procedural weaknesses that are exploited by defense lawyers. Third, torture has a corrupting effect on the institutions that use it and weakens effective recruitment of candidates into police ranks. Fourth, when innocent people confess to crimes they did not commit, the victims’ right to the truth and access to justice is violated, even if a guilty verdict is not reached.

Torture as a social control method

The 2018 National Assessment of the Prison System drawn up by the National Human Right Commission (CNDH: *Comisión Nacional de los Derechos Humanos*), using state and federal prison administrative records, documents that 74 percent of the ill-treatment (from beatings to physical and mental injuries that can be classed as torture) that occurs in Mexican prisons is perpetrated by authorities as a means of punishment or control (CNDH, 2019: 528).

Through interviews with prison inmates and prison staff between 2015 and 2019, the World Justice Project team has identified patterns in the use of torture in Mexican prisons as a social-control mechanism of those awaiting a verdict and those already convicted. This coincides with the data on torture in prisons from other sources (United Nations, 2011 and 2015; Human Rights Watch, 2017). Overcrowding, the lack of supervision and self-government that prevails in Mexican prisons generates an unlawful environment where torture forms part of a social control system.

It is important to note that the National Assessment of the Prison System also identifies closed spaces like sleeping quarters, where most ill-treatment, classed as torture, takes place. The access and keys to sleeping quarters are held only by prison wardens. The Assessment further identifies ill-treatment that can be classed as torture among the principal causes of grievances concerning human rights violations submitted by the prison population (CNDH, 2019: 527 y 531).

Miguel Sarre, Juan Morey and Eric Archundia comment in a text published by the Due Process of Law Foundation that “it is fundamental that the [Inter-American Human Rights] Commission should disseminate by all available means the need to transfer –with necessary amendments– the rights and guarantees of due process (as stipulated in Article 8 of the American Human Rights Convention) to the penal enforcement setting, while fostering pertinent international standards,

⁵*Female police investigator* 2 interviewed by Roberto Hernández and Laura Barranco on November 18, 2015. Anonymized and non anonymized transcription in the World Justice Project database.

proper compliance with which would reduce the risk of continuing torture and similar illegal acts in prisons in our region” (Due Process of Law Foundation, 2019:12). In other words, it is essential that prison system operators (under state and federal authorities) should recognize the authority of the Criminal Enforcement Judge and respect his or her decisions.

What can be done to prevent and eradicate torture or ill-treatment?

It may be hard to believe, but it is possible to reduce torture and, at the same time, improve the efficiency of the Mexican criminal system. This has been the happy outcome in countries that enjoy both high levels of personal safety and respect for human rights.

In the case of Mexico, the lesson to be learned is that, alongside obstructive measures designed to make torture impossible and punish its use, legal ways of making investigation more robust can be explored. This includes improving suspect and witness interview techniques, improving identification procedures and professionalizing procedures for inspecting individuals and places. Not only are these investigative acts those most commonly used by the Mexican penal system, they are also those which generate settings for the prevalence of torture.

In the case of torture as an investigative technique, improving criminal investigation methods will not only make it possible to eliminate illegal violence starting with State institutions, but will also produce more robust criminal prosecutions. This is an area which, curiously, is a win-win situation for both those who promote torture as a means of increasing the conviction rate and those who condemn its use as a serious human rights violation.

Additional intervention is required in the area of torture as a means of social control. In first place, internal and external control mechanisms must be strengthened at Mexican prisons. Precise measures are highlighted in the final section of this report, which contains concrete public policy recommendations. Furthermore, behind the violation of rights to personal integrity and safety of individuals who have been deprived of their freedom by means of torture lies non-compliance with the right to ordinary legal remedy under national law and international human rights treaties ratified by Mexico, especially the American Convention on Human Rights. The existence of fully-functioning Criminal Enforcement Judges will significantly reduce the patterns of torture used as punishment and a means of social control in the Mexican prison system.

RESULTS OF THE NATIONAL SURVEY ANALYSIS GIVEN TO THE PRISON POPULATION

The reasons for torture or ill-treatment

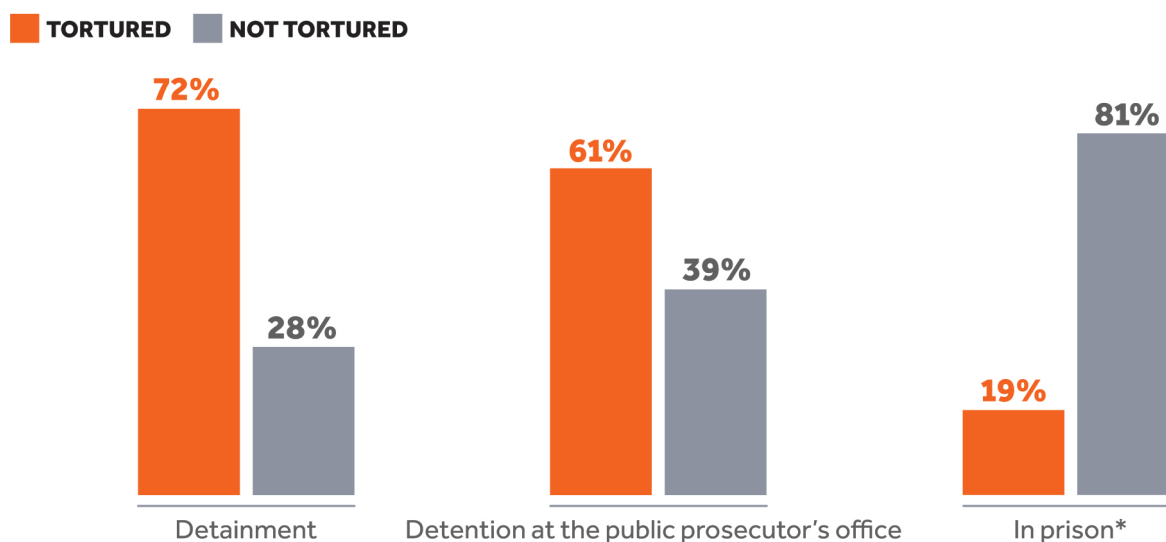
This section shows data that suggest that torture or ill-treatment are used for two main reasons: to obtain incriminating evidence and as a means of control and intimidation of individuals deprived of their freedom. The following compares the prevalence of torture or ill-treatment reported in three situations associated with obtaining incriminating evidence. First, during the detainee's arrest and transfer (in principle to the Public Prosecutor Office or before a criminal judge, although there are other transportation alternatives that are illegal and closely-related to torture or ill-treatment) and secondly, during detention at the Public Prosecutor Office. Torture is preponderantly used during these initial moments to obtain incriminating evidence (although also, to a lesser extent, to subdue the subject). There is a third time, in prison, when preponderance passes from obtaining incriminating evidence to exercising control over the detainee.

The hypothesis is that torture is very likely to be found in places where all three objectives (control, intimidation and criminal investigation) coincide. Torture is found to a lesser extent where the preponderant objective is investigation, and even less where the preponderant objective is only intimidation. To demonstrate this, levels of torture during arrest and transfer are compared; during custody at the Public Prosecutor Office (where torture is usually used to obtain incriminating evidence) and in prison (where torture is not used to obtain incriminating evidence but simply to control or intimidate the detainee).

GRAPH 2

MEXICO, 2006-2016: THE PREVALENCE OF TORTURE OR ILL-TREATMENT

BY CRIMINAL JUSTICE SYSTEM STAGE



*The types of torture or ill-treatment in prison are not directly comparable to those at previous procedural stages, only for 2016.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Graph 2 shows that there is less torture or ill-treatment when its purpose is not to gather incriminating evidence. In contrast, there is more torture or ill-treatment when that actually is the objective: during detention where, in addition to completing the arrest, detainees are interrogated, and at the Public Prosecutor Office, where it can be assumed that torture is preponderantly used to obtain incriminating evidence. Therefore, in a system where torturing and/or ill-treating a large part of the prison population is common, more torture or ill-treatment for the purposes of control and intimidation is observed, less when torture is related to investigative purpose, and even less when the authorities are more interested in simply controlling and subduing the inmates. The data support this proposal: more torture or ill-treatment occurs during the arrest (72 percent of those arrested); relatively less at the Public Prosecutor Office (69 percent) and less still in prison (19 percent).

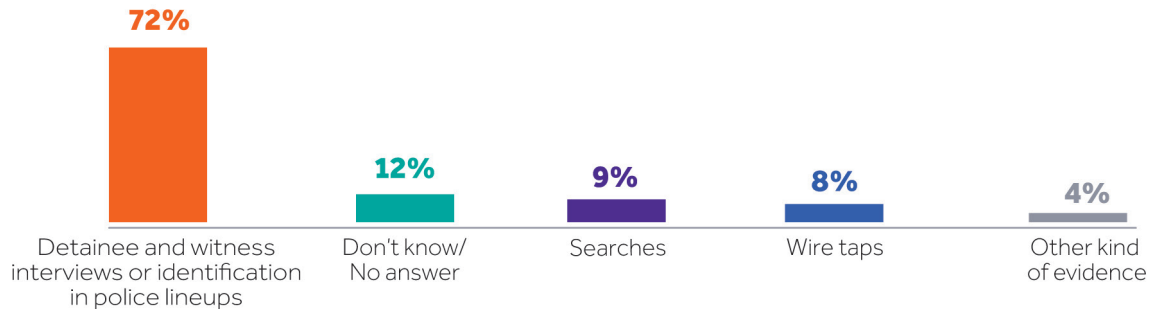
In prisons, where there is no longer any interest in collecting incriminating evidence, it can be noted that torture for this purpose practically disappears. During detention, where the objectives of social control and uncovering evidence coexist (since the detainee is interviewed during detention), there is more torture. At the Public Prosecutor Office, once the individual has been captured, the social control component gives way to that of gathering incriminating evidence. The standard frequency of torture observed supports this interpretation of the data. In other words, these two objectives persist. It can also be observed that most of the violence is for the purpose of generating incriminating evidence. Further evidence of this pattern is exhibited in the other sections of this report. It is, therefore, important to analyze data on torture together with the due process content of the criminal investigation procedures at this stage, which are the most common and which generate most of the incriminating evidence used in Mexico.⁶

To understand the way these figures work, it must be borne in mind that investigative procedures take place during arrest and transfer, such as detainee interviews, search of individuals and premises, and *in situ* witness identification of the suspect in the public place where he or she is held in custody. In other words, the detention process itself often includes searches, identifications and interviews; the three investigative acts *par excellence*. Graph 3 shows the different sources of evidence that were used to criminally prosecute thousands of people who were incarcerated between 2006 and 2016, 81 percent of whom were prosecuted as a result of one of the three aforesaid investigative acts (72 percent from detainee/witness interviews or identification in a police lineup, and 9 percent from searches).

⁶It is worth noting that different types of torture are quantified in each of these groups because the INEGI did not apply the same types of torture to all cases or because during detention it is sometimes impossible to distinguish between the legitimate use of force and torture. Therefore, only behaviors that indisputably involved the use of torture, such as rape, were taken into account.

GRAPH 3

MEXICO 2006-2016: EVIDENCE USED* DURING LEGAL PROCEEDINGS
 PERCENTAGE OF PERSONS DEPRIVED OF LIBERTY



*The total percentage may exceed 100% due to interviewees reporting more than one type of evidence.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Given the prevalence of witness evidence and confessions, it can be said that the criminal system depends on evidence that exists in human memory, also known as the “mental crime scene”. Since the criminal justice system is only as reliable as the human memory—the majority of criminal accusations principally depend on the capacity of those involved to remember evidence—the question arises as to how the preservation of human memories will affect illegal violence. Shane O’Mara (2015: 127-142), by reviewing different experimental neuroscience techniques, has conducted an in-depth study of the alterations stress produces in the brain of a person undergoing torture. O’Mara concludes that the mental damage inflicted by torture blocks the capacity to remember things clearly and even affects cognitive skills.

Scientific studies on torture and due process imperatives make it necessary to know if the investigative acts are fair or simulations (involving illegal violence); in other words, if they are legal or illegal and comply with constitutional standards.

The ENPOL provides data that make it possible to state that most of the evidence in the Mexican criminal system is obtained through investigative procedures involving illegal violence by State agents. This survey asked about pressure and violence experienced by the detainee at the time of his or her arrest and even before they were taken to the Public Prosecutor Office.⁷

Tables 1 and 2 below show results that reveal the prevalence of torture or ill-treatment and pressure placed on the detainee during detention. Of the 107,192 people who were interrogated during transit, 87,834 were found to have been interrogated and tortured or ill-treated. Very few detainees (19,358: less than a fifth) were not tortured when interrogated during detention or transit. Also, 47,135 people were not interrogated but tortured nonetheless during transit. The members of this group were not tortured or ill-treated to obtain information but perhaps to subdue them. This confirms: that most torture observed is for the purpose of extracting incriminating evidence.

⁷It should be mentioned that, as the individual may be taken to one of many different Public Prosecutor Offices, the survey should simply ask if he or she was interrogated during transit.

TABLE 1
THE PREVALENCE OF TORTURE OR ILL-TREATMENT WITH RESPECT TO INTERROGATION
DURING DETENTION (2006-2016)

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE DETAINEE WAS INTERROGATED DURING DETENTION							
	YES		NO		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%
YES	87,834	82%	47,135	59%	269	35%	18	8%
NO	19,358	18%	32,468	41%	491	65%	211	92%
TOTAL	107,192	100%	79,603	100%	760	100%	229	100%

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

TABLE 2
THE PREVALENCE OF TORTURE OR ILL-TREATMENT WITH RESPECT TO PRESSURE APPLIED
IN INTERROGATION DURING DETENTION (2006-2016)

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE DETAINEE WAS PRESSURED DURING THE INTERROGATION							
	YES		NO		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%
YES	73,783	93%	13,999	51%	36	74%	16	37%
NO	5,704	7%	13,615	49%	13	26%	27	63%
TOTAL	79,486	100%	27,613	100%	49	100%	43	100%

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Table 2, in particular, shows 73,783 suspects, also tortured or ill-treated, who claim to have been pressured for information by the police. Only 7 percent of those who say they were pressured do not report that they were tortured or ill-treated. This demonstrates that “interviewing” as an investigative act is closely tied to illegal violence.

According to the National Code of Criminal Procedures (CNPP: *Código Nacional de Procedimientos Penales*), in effect since 2016, it is illegal to interview detainees during transit after being arrested. Even though not everyone in the INEGI sample was subject to these rules when detained, the data show an undisputed correlation between the “torture during arrest” variable and the “interrogated during transit” variable.

These data reveal that a large part of the prevalence of torture or ill-treatment is closely linked to investigative acts whose purpose is to generate incriminating evidence in the form of confessions, statements from eye-witnesses and accomplices. Otherwise, there would be no explanation as to why those interrogated are also tortured. In this context, the question arises as to what the outcomes of torture are when it is used as a method of criminal investigation and how the human memory is affected when subjected to violence.

Is there empirical evidence that torture works?

The present section analyzes quantitative evidence that torture and ill-treatment change case outcomes. These irregularities unlawfully produce the most used criminal evidence and additionally exert a corrupting effect on police. Starting with a first notion, if torture were effective, we would only find the guilty among the most tortured populations. Additionally, if torture really did produce the effect of extracting truthful information from individuals who resist supplying that information, confession content would always be true, despite the fact it was extracted through torture.

ENPOL data demonstrate the contrary. As will be seen below, torture or ill-treatment does not contribute to inquiries into the truth or justice in general, since when they occur it is impossible to determine if the information the tortured or ill-treated person provided was stated to avoid the pain to which that person was being submit or because the information is truthful. When truthful information begins to mix with false evidence, reliability in all the evidence is lost. When scantily reliable evidence is used to hand down sentences, chances increase that judges will make mistakes.

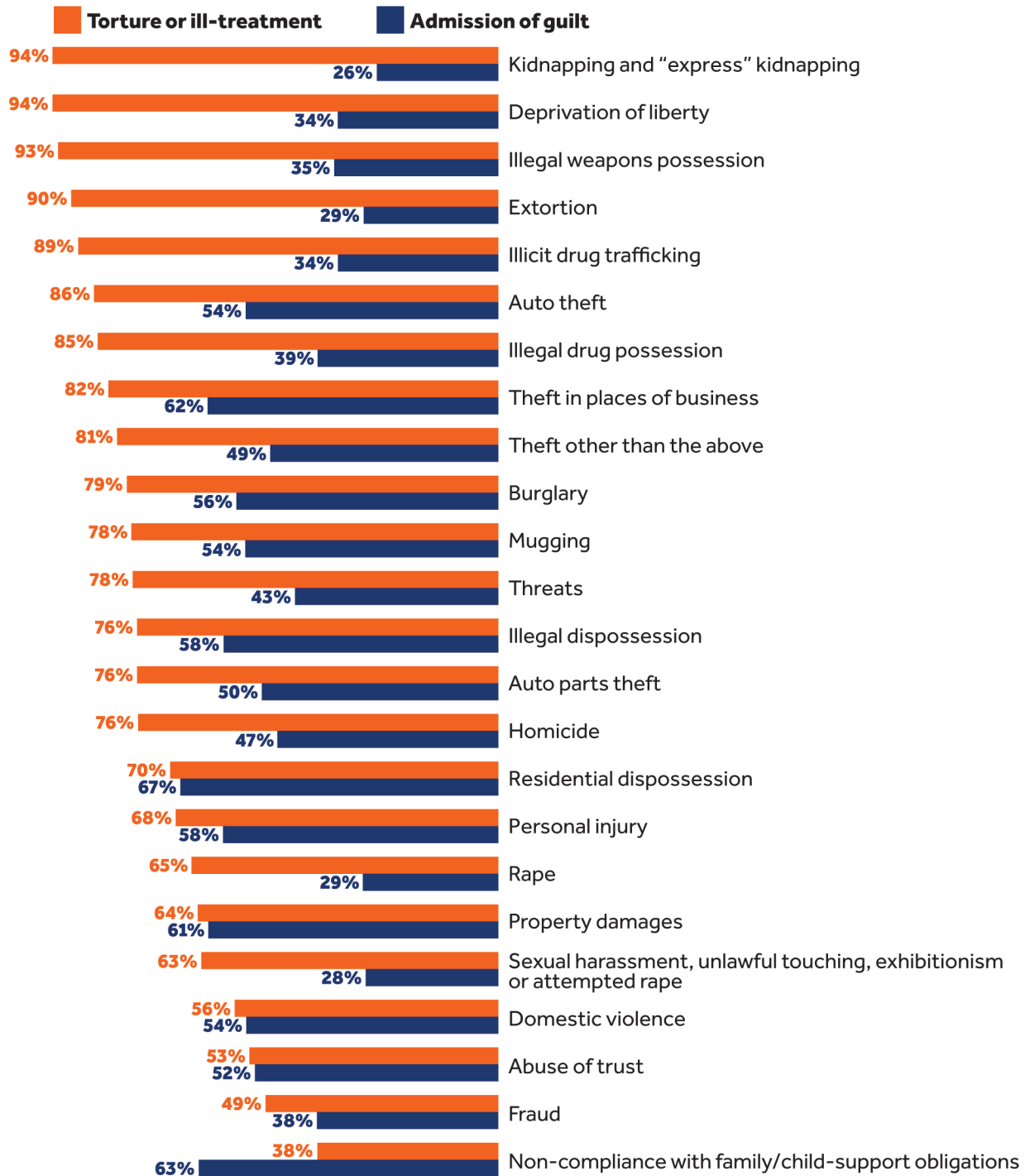
Below quantitative evidence show that torture or ill-treatment gives rise to serious errors. Three interdependent hypotheses support this assertion:

- 1.** Torture and/or ill-treatment are not applied equally to every crime. They are most often applied to kidnapping, organized crime and related offenses.
- 2.** Variations in levels of torture and ill-treatment by offense, are visible, as well as variation in the outcomes produced by torture. Specifically, the proportion of people who declared to INEGI survey-takers that they were guilty.
- 3.** If torture or ill-treatment were functional, authorities would know how to distinguish correctly the innocent from the guilty before, or during, the infliction of punishment; they would know when to arrest and distinguish between true and false information. On the contrary, if torture or ill-treatment were dysfunctional, they would be applied indistinctly to those who declare themselves innocent and those who say they are guilty. It would also be observed that faced with an inability to distinguish between the two, those who said to be innocent would be the objects of the most confrontational interrogations or the highest levels of torture or ill-treatment.

GRAPH 4

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT AND ADMISSION OF GUILT*

BY OFFENSE; EPISODES REPORTED WHILE UNDER ARREST OR IN PUBLIC PROSECUTOR CUSTODY



*Guilt is assumed to have been admitted when interviewees respond that they are in prison because they committed a crime or participated in its commission.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

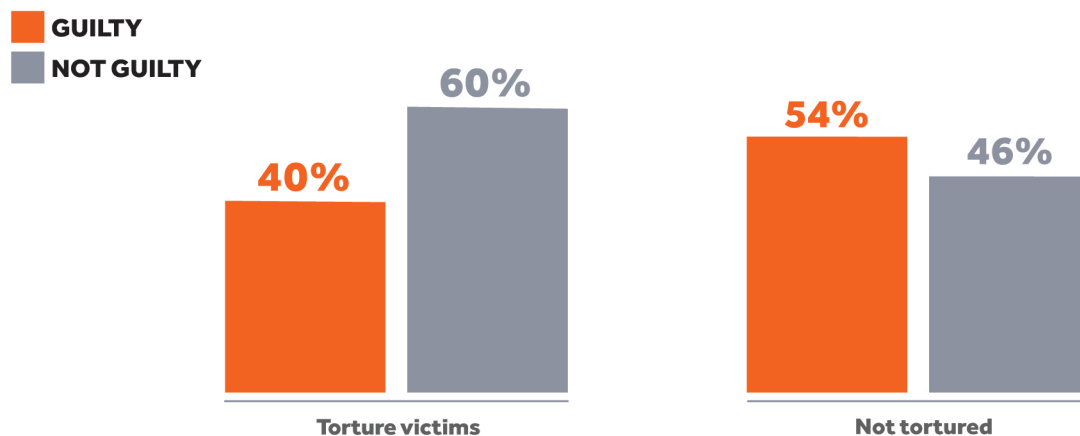
If torture or ill-treatment worked effectively for prosecuting the guilty, there would be more individuals identified as guilty among most tortured populations in Graph 4. If torture is dysfunctional the opposite would be found: fewer guilty in most tortured or ill-treated populations. Yet clearly what we are seeing is that there are fewer guilty parties among the most tortured or ill-treated populations. In addition, an obvious inverse relationship may be observed between torture or ill-treatment levels and the number of judicial errors. The more torture or ill-treatment we see, the less frequently do detained individuals admit guilt. The less torture we observe the more frequent is it that detained persons admit guilt.

For example, kidnapping and “express” kidnapping are the offenses most likely to involve torture or ill-treatment while under arrest, during transit or while in public prosecutor custody. There is a 94 percent prevalence of torture or ill-treatment among persons accused of those offenses at the same time that kidnapping and “express” kidnapping are the crimes to which the least number of persons admitted guilt to INEGI survey-takers. In contrast an opposing pattern can be observed in the graph’s last line. A mere 38 percent of those accused of family/child support non-compliance were tortured or ill-treated. Non-compliance with family/child support obligations have the lowest observed levels of torture or ill-treatment. We also see in Graph 4 it is the offense for which individuals most often admitted guilt to INEGI survey-takers.

GRAPH 5A

MEXICO, 2006-2016: ADMISSION OF GUILT

PERCENTAGE BY CONDITION OF TORTURE OR ILL-TREATMENT DURING ARREST OR WHILE IN PUBLIC PROSECUTOR CUSTODY



Universe: 148,136 persons deprived of liberty who were tortured or ill-treated during arrest, transit or while in public prosecutor custody and 39,648 who were not tortured or ill-treated in the 2006-2016 period.

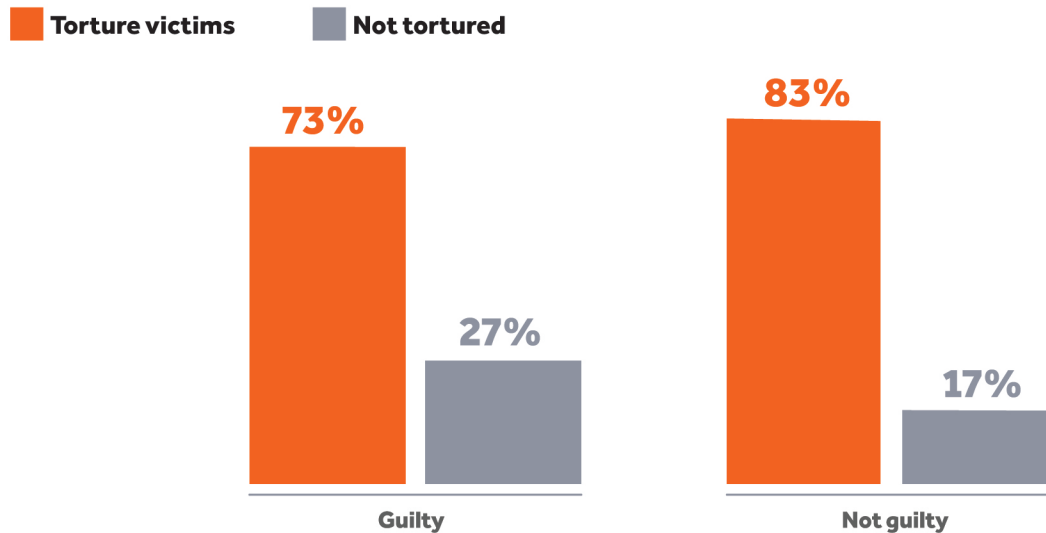
Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Based on information in Graph 5B, if the liberty-deprived population is divided into two groups—those who admit guilt in the survey (i.e., they tell the INEGI survey-taker “I have been jailed because I commit or participated in a crime”) and those who do not choose those options (effectively declaring their innocence)—we see that 73 percent of individuals who admit guilt were tortured or ill-treated while being under arrest, in transit or in public prosecutor custody.

GRAPH 5B

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT DURING ARREST OR WHILE IN PUBLIC PROSECUTOR CUSTODY

PERCENTAGE BY ADMISSION OF GUILT



Universe: 106,924 individuals who declared their innocence and 80,859 individuals who admitted their guilt in the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

In contrast, 83 percent of those who do not admit guilt were tortured or ill-treated. This shows that those who declare themselves innocent are more frequently tortured or ill-treated than those that admit their guilt. In his academic study on innocence in criminal trials, Saul Kassin (2005: 216) demonstrated that the innocent accused generally and emphatically deny their guilt. At the same time, justice-system operators who recur to violent interrogation techniques tend to subject those who emphatically deny their guilt to more aggressive interrogations.

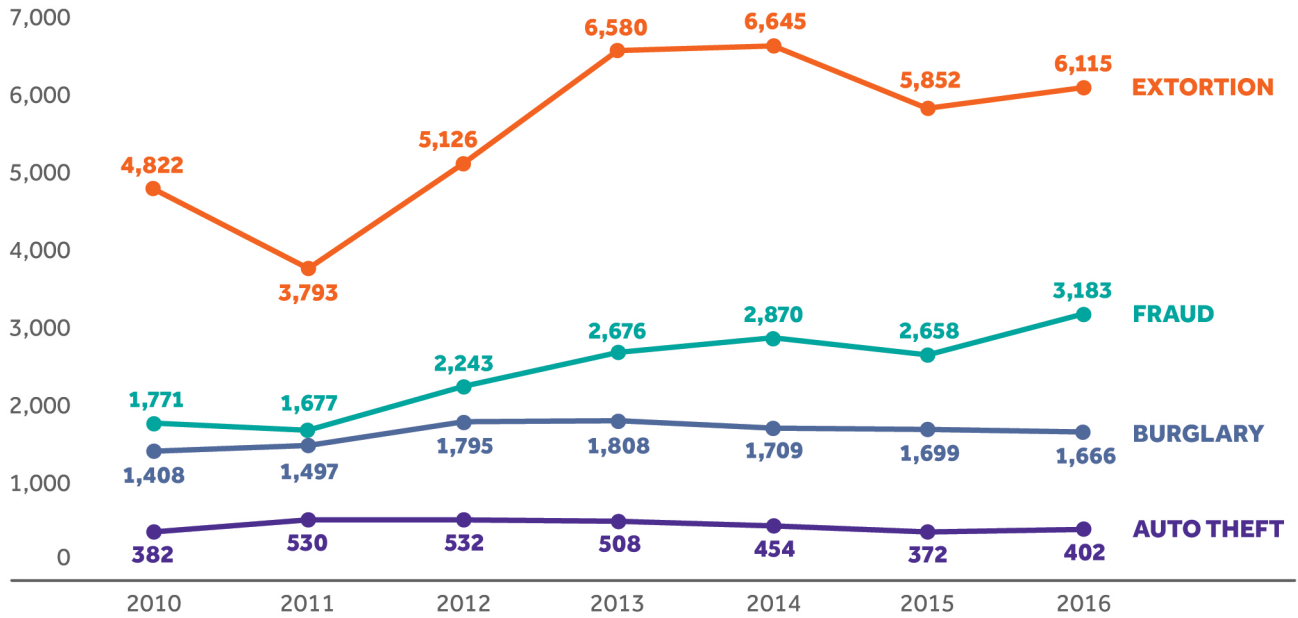
In a nation of laws, the fact that a person under justice-system process is tortured or ill-treated is an extremely grave issue. Based on the data, we can infer authorities cannot distinguish between the innocent and the guilty, neither before, during or after episodes of torture or ill-treatment. The sole element that allows this distinction is objective, credible evidence. When there is torture or ill-treatment, testimonies and interrogations' creditability are lost and as a consequence, the possibility of wrongful convictions increases.

To conclude, if torture had any effect on making interrogation processes more efficient, there would be a greater prevalence of guilty individuals in the tortured or ill-treated population. Instead we see a smaller proportion of guilty individuals in the most tortured or ill-treated population as well as a larger proportion of the guilty in the least tortured population. It therefore makes no sense to torture. What does make sense is understanding how guilt was proven in cases where there was no torture or ill-treatment. Graph 6 demonstrates that in addition to being useless in terms of process, the prevalence of torture or ill-treatment cannot be correlated to statistically significant crime reduction.

GRAPH 6

MEXICO, 2010-2016: CRIMINAL INCIDENCE FOR EVERY 100,000 INHABITANTS

SELECTED OFFENSES



Source: INEGI (multiple years). National Victimization and Perceptions of Public Safety Survey (ENVIPE). Consejo Nacional de Población, 2019. *Proyecciones de la Población de México y de las Entidades Federativas, 2016-2050*. Población a mitad de año.

In Graph 6 ENPOL data is not used but rather included the INEGI's 2018 *National Victimization and Perceptions of Public Safety Survey (Encuesta nacional de victimización y percepción sobre seguridad pública; acronym in Spanish: ENVIPE)*. Four crime behaviors between 2010 and 2016 may be observed. According of those accused of three such crimes (extortion, residential burglary and auto theft) are among those who report the most prevalent torture or ill-treatment; those accused of fraud, on the other hand, are those who report the least prevalence of torture and ill-treatment.

Grand theft auto and residential burglary are offenses that exhibit stable behaviors over the course of six years, despite a high prevalence of torture and ill-treatment for those accused of committing them. In turn, extortion is a crime whose incidence is on the rise, despite a high prevalence of torture for those accused of committing it. Fraud—with a low prevalence of torture and ill-treatment for those who are accused of committing it—is also on the rise. Considering these offenses alone, it is difficult to establish any correlation between the impact of torture or ill-treatment in criminal investigations and overall crime reduction. The sections below feature data on torture-level variations and final outcomes in the cases ENPOL registers.

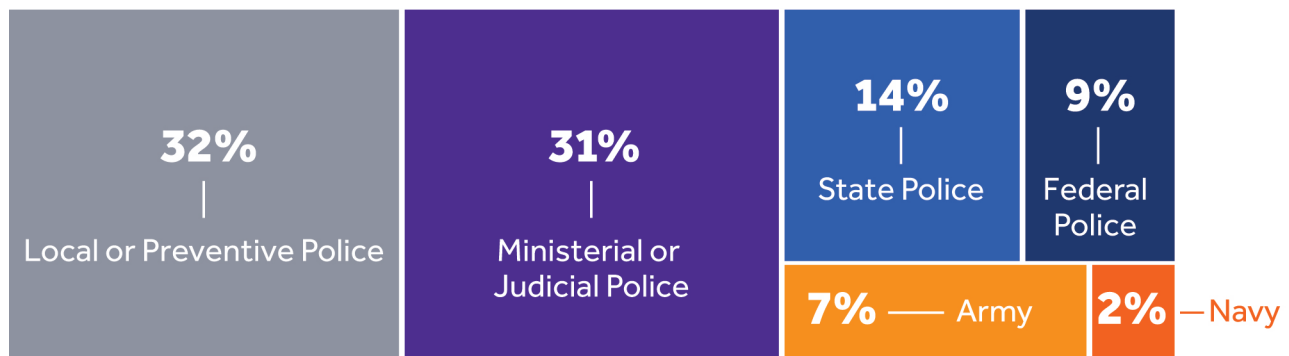
Torture or ill-treatment by authority

In 2006, the OECD's *Metagora Project* concluded a survey of the general public in Mexico City to document torture or ill-treatment at large. After coining the operative term *abuse* (*abuso* in Spanish) to include acts of both torture and ill-treatment, the study shows that 67 percent of the public prosecutor's contacts with citizens and 45 percent of citizen contact with all law-enforcement institutions that operate in Mexico City include abuse (Salgado and Naval, 2006: 23). The study meticulously analyzed the nature of the acts of torture or ill-treatment that different authorities perpetrated and shed light on the importance of this information for transforming practices and implementing specific public policy.

GRAPH 7A

MEXICO 2006-2016: INDIVIDUALS TORTURED OR ILL-TREATED WHILE UNDER ARREST

BY ARRESTING AUTHORITY



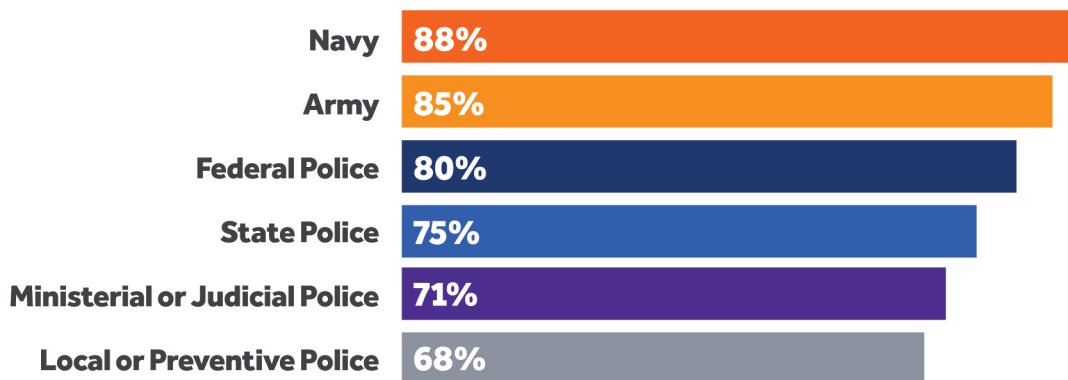
Universe: 135,255 persons deprived of liberty that were tortured or ill-treated during arrest or transit in the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

GRAPH 7B

MEXICO 2006-2016: THE PREVALENCE OF TORTURE OR ILL-TREATMENT BY ARRESTING AUTHORITY

PERCENTAGE OF TOTAL ARRESTS, BY AUTHORITY



Universe: 3,601 persons deprived of liberty arrested by Mexico's navy; 10,715 by the army; 15,634 by the federal police; 25,396 by the state police; 58,762 by ministry police; and 63,176 by the preventive police, 2006-2016.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Graph 7A shows that most arrests fall to local or preventive police, followed by investigative ministerial police. This suggests that reform efforts should focus first on the police institutions that arrest the most individuals if we seek to change authority behaviors in the majority of cases.

Additionally, Graph 7B shows each law-enforcement institution’s behavior at time of arrest or transit. All institutions present high levels of unlawful violence as they participate as criminal justice system operators. 88 percent of all persons the Navy arrested were tortured or ill-treated while under arrest or in transit to the Public Prosecutor Office. Also 68 percent of all local police arrests present evidence of torture or ill-treatment.

In Tables 3, 4 and 5, ENPOL data shows patterns of torture or ill-treatment in one of the institutions where the phenomenon is most prevalent: the Public Prosecutor Office. Consequently, survey results report a considerably high prevalence of torture or ill-treatment when the accused are interrogated. Each table specifies the prevalence of these unlawful acts in accordance to criminal justice operators.

**TABLE 3
PREVALENCE OF TORTURE OR ILL-TREATMENT BY INTERROGATION CONDITIONS
IN PUBLIC PROSECUTOR CUSTODY (2006-2016)**

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE ACCUSED WAS INTERROGATED WHILE IN PUBLIC PROSECUTOR CUSTODY							
	YES		NO		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%
YES	88,464	66%	23,165	49%	377	23%	35	4%
NO	45,870	34%	24,090	51%	1,265	77%	773	96%
TOTAL	134,333	100%	47,255	100%	1,641	100%	807	100%

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

This table portrays the overall prevalence of torture or ill-treatment at the Public Prosecutor Office. It signals that most of those in prison were arrested and interrogated at the Public Prosecutor Office. High levels of torture or ill-treatment prevalence may be observed in interrogations the Public Prosecutor Office carries out, as also happens in interrogations undertaken during transit. The Public Prosecutor Office tortured or ill-treated a total of 88,464 individuals, i.e., 66 percent. Additionally, 23,165 persons were tortured or ill-treated without being interrogated. The fact that these data indicate greater prevalence of torture or ill-treatment among individuals who are interrogated points to this unlawful act being used to extract confessions or information on other crimes.

TABLE 4
PREVALENCE OF TORTURE OR ILL-TREATMENT, BY INTERROGATION CARRIED OUT
BY JUDICIAL OR MINISTERIAL POLICE (2006-2016)

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE ACCUSED WAS INTERROGATED BY A JUDICIAL OR MINISTERIAL POLICE OFFICER							
	YES		NO		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%
YES	56,139	73%	28,707	55%	3,610	69%	7	33%
NO	21,080	27%	23,152	45%	1,622	31%	15	67%
TOTAL	77,219	100%	51,859	100%	5,233	100%	22	100%

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Table 4 shows that 73 percent of those whom the judicial or ministerial police interrogated reported torture or ill-treatment. Put another way, these data show that almost three-fourths of those interrogations involved unlawful violence but did not necessarily reveal who the culprit was since the survey did not ask “Which authority tortured you?” High prevalence is evident, but torture or ill-treatment may have happened before or after the interrogation.

TABLE 5
PREVALENCE OF TORTURE OR ILL-TREATMENT, BY INTERROGATION CARRIED OUT
BY AGENTS AT PUBLIC PROSECUTOR OFFICE (2006-2016)

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE ACCUSED WAS INTERROGATED BY AN AGENT IN THE PUBLIC PROSECUTOR'S OFFICE							
	YES		NO		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%
YES	59,679	63%	24,690	74%	4,074	72%	21	58%
NO	35,359	37%	8,901	26%	1,595	28%	15	42%
TOTAL	95,038	100%	33,592	100%	5,668	100%	35	100%

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

The prevalence of torture or ill-treatment is lower when conducting interrogations, a 10 percentage-points difference relative to the interrogations that judicial or ministerial police undertake. One of the most vulnerable moments for citizens during arrest is when they are transported in squad cars. Within such places and at such times, citizens are alone with law-enforcement and this can be related to greater prevalence of police-interrogation-related torture or ill-treatment.

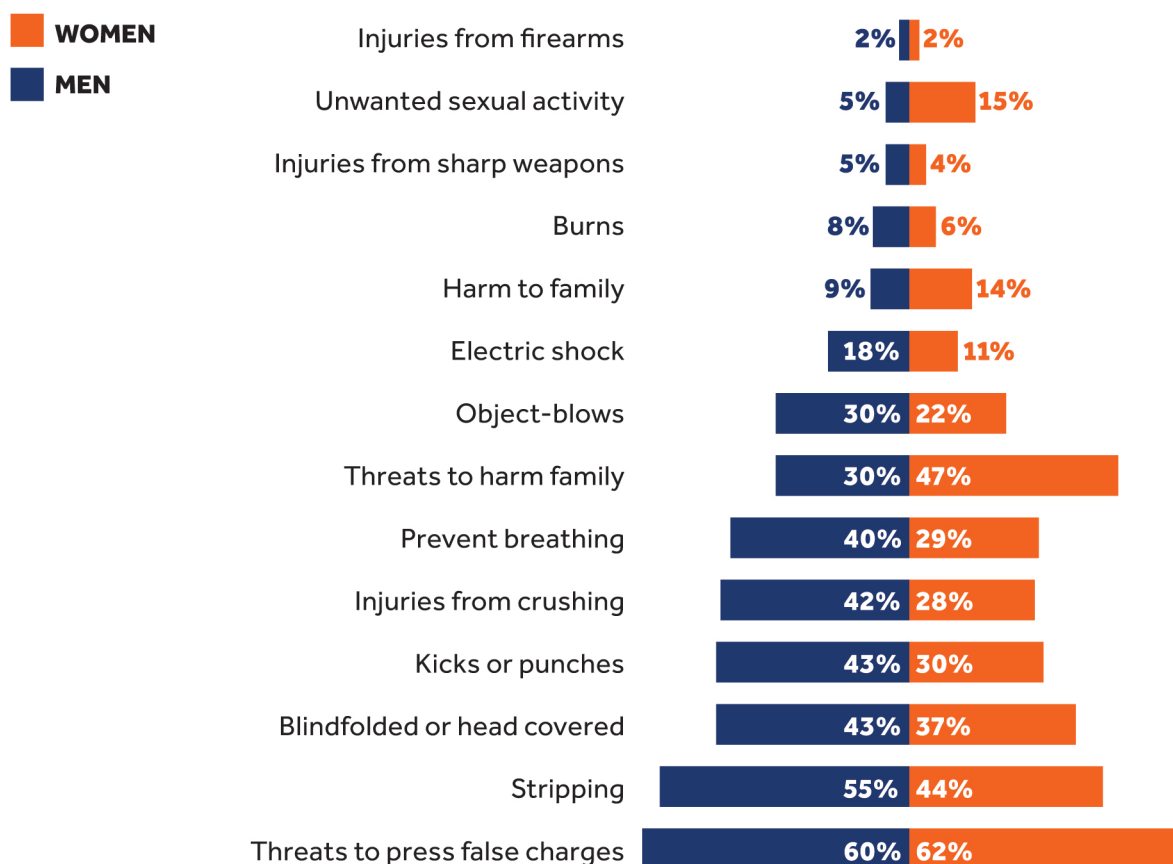
Torture or ill-treatment: modalities and victims

In addition to ENPOL data, this section includes qualitative information gathered from a database (specifically 16GB of text-file transcriptions) that holds interviews with preventive and reactive police as well as researchers in Mexico and abroad. Specific torture and ill-treatment modalities that ENPOL recorded throughout arrest, Public Prosecutor Office custody and prison stays are also documented. As noted above, torture is most frequent and severe in phases leading up to penitentiary incarceration. Also INEGI measured in-prison torture differently from torture endured while under arrest, in transit and in prosecutor custody.

GRAPH 8

MEXICO 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT, BY GENDER

TORTURE OR ILL-TREATMENT REPORTED WHILE UNDER ARREST
OR IN PUBLIC PROSECUTOR CUSTODY



Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

As portrayed in Graph 8, gender-based differences in torture or ill-treatment are considerable. While male inmates are more often harmed with blows and kicks and less frequently with heads covered, women are victims of more sexual violence as well as threats of aggressions that will harm their relatives.

Following her official visit to Mexico in April 2019, UN High Commissioner for Human Rights Michelle Bachelet declared:

Of particular concern are accusations of sexual torture from woman detainees; one in ten affirms having been a victim of rape during the arrest process. My office is collaborating with state institutions to implement the General Torture Act, to clear up cases of individuals who were convicted based on evidence extracted through torture.⁸

In a decision handed down against the Mexican government on 28 November 2018 in the case of *Mujeres Víctimas de Violencia Sexual en Atenco vs. México*, the Inter-American Human-Rights Court declared the Mexican government:

Is responsible for violations of rights to personal integrity, privacy and freedom from torture as stipulated in Convention Articles 5.1, 5.2 and 11, related to requirements for respecting and guaranteeing those rights free from discrimination, as established by that convention's Articles 1.1 and 2 as well as Articles 1 and 6 of the Inter-American Convention Against Torture and Article 7 from the Belém do Pará Convention [against eleven female sexual-violence victims at the above-mentioned police installation] (COIDH, 2018: 137).

The decision establishes a major jurisdictional precedent in International Law with regard to women's sexual torture in Mexico. ENPOL data reveal this is not an isolated case. Based on this survey's result, we observe a distinct prevalence for torture or ill-treatment that separately affects women. Also, sexual violence is three times more prevalent among women in comparison to that violence inflicted among male detainees. We see that threats to harm family members are considerably greater as inflicted on women.

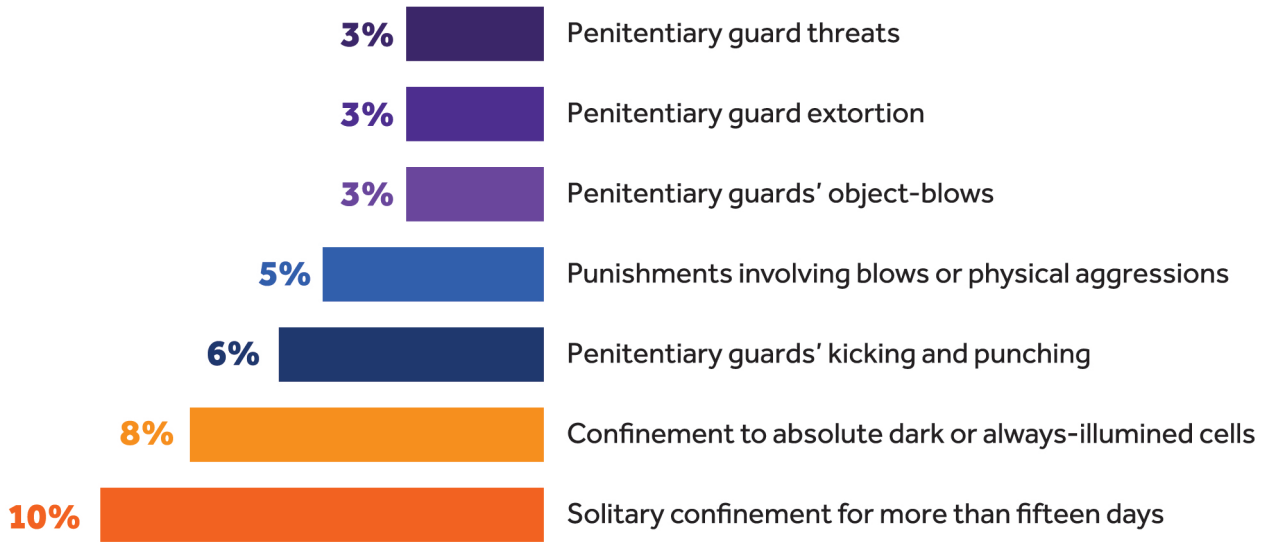
Graph 9 below portrays the most prevalent torture or ill-treatment modalities in Mexico's penitentiaries. The organization known as *Observatoire International des Prisons* considers any deviation from a prison's daytime open-cell-door policy is a human rights violation perpetrated on persons deprived of liberty (2012: 106). Legal sentences include privation of liberty but unjustified confinement is an extrajudicial punishment and a means of ill-treatment that can range from slight ill-treatment (denying open-air hours) to torture (confining persons deprived of liberty to dark cells or cells that alter their psycho-emotional conditions). ENPOL data shows that solitary confinement for more than 15 days is the most prevalent ill-treatment in Mexican penitentiaries. Other irregularities—from physical blows to threats and extortion—are less prevalent quantitatively but are major impacts in terms of social control over persons deprived of liberty.

⁸https://www.hchr.org.mx/index.php?option=com_k2&view=item&id=1254:declaracion-de-la-alta-comisionada-de-naciones-unidas-para-los-derechos-humanos-michelle-bachelet-con-motivo-de-su-visita-a-mexico&Itemid=265 consulted 7 October 2019.

GRAPH 9

MEXICO, 2016: PREVALENCE OF TORTURE OR ILL-TREATMENT IN PENITENTIARIES

BY TYPE OF REPORTED TORTURE OR ILL-TREATMENT PERSONS ARRESTED FROM 2006 TO 2016



Universe: 187,784 persons deprived of liberty who were arrested in the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Based on cross-reference between WJP databases and interviews with victims of violence carried out by police, police detectives, preventive and reactive police as well as other criminal justice operators, below several testimonies are shown, and additional information regarding references to torture during in-depth interviews with police. These twenty interviews were conducted anonymously and randomly selected using NVivo technology that also processed and systematized the information.

GRAPH 10

TORTURE MENTIONS THROUGHOUT CONVERSATIONS IN TWENTY INTERVIEWS WITH POLICE INVESTIGATORS

RANDOM SELECTION



Source: Mexican investigative police interviews, 2015-2019, WJP.

WJP's investigative police interviews largely explore life experience-based information about how agents carry out acts of investigation on standard workdays. They also ask questions about working conditions, corruption and the use of force. In fifteen of the twenty selected interviews, there is reference to torture throughout the conversation despite this was not a specific issue interview questions were said to elucidate.

Regarding the selected testimonies, the first refers to a police operation in which a presumed culprit was tortured to extract information on extrajudicial executions his gang had carried out. It represents not only an illegally obtained confession but also evidence that is invalid in regards to criminal proceedings.

INSET 1**TESTIMONY OF TORTURE FROM AN INVESTIGATIVE POLICE OFFICER**

(ANONYMOUS)

REFERENCE 1 - 0.32% COVERAGE

I was there. The intelligence guys went in and yes, they found...the ones that had disappeared him. But—as expected—they tortured those guys' boss so he'd talk and yeah, he later confessed it was him and how they killed them. They killed them supposedly, the boss [sic] they were six, seven elements. He killed two and the rest, each guy supposedly gunned them down. Then they burned their bodies and scattered their ashes from Puente del Fierro bridge.

Source: Mexican investigative police interviews, 2015-2019.

INSET 2**TESTIMONY BY A TORTURE VICTIM'S RELATIVE**

(ANONYMOUS)

REFERENCE 2 - 1.43% COVERAGE

The prosecutor says no, it's not possible, that if he wants [sic] we can speak softly, my father says, ok, ok and then starts to say to the inspector that he's asking for and demanding that he gets 24-hour institutional security-camera oversight, since he'd been ill-treated, tortured and beaten up the day they detained him. My father says this, that he was tortured, that he was ill-treated; that they administered electric shock to his genitals, even his nipples, they beat him up; he says they put him into an armored SUV and made all these turns to confuse him. Then they tortured him again, applied shocks, struck him and let him have water. They mocked him, said he'd been good for nothing, that the guy from Mexico City had already fucked him over and later they would take him to the prosecutor's office so he could effectively admit he'd committed the "express-kidnapping."

REFERENCE 3 - 1.69% COVERAGE

...when he starts to hear, the prosecutor turns to him and says, “no, no, no, that’s not what you’re going to declare. What you’re going to declare is that you committed the express-kidnapping.” He says “I’ll do nothing of the sort. First of all, I don’t have my personal lawyer and they gave me a court-appointed attorney, a woman. Tell him this, that I’m not going to allow abuse like this;” and later the attorney, still court-appointed, told him she didn’t participate in these kinds of situations so the prosecutor directly orders they bring him back down and that’s when they tortured him again. They take him up to the Assistant Prosecutor, the one who’s under the woman-prosecutor. They take him up with him and they say directly to my father whose code name was Lobo “see here, Lobo, you’re going to confess, you’re going to confess you did the kidnapping,” and my father says to him, “why would I confess if I haven’t done anything wrong. If I’m going to declare then I’m going to declare what I did and nothing else.” “Oh, ok, you can’t take a hint?” said the Assistant Prosecutor. And they took him downstairs and tortured him again.”

Source: Prison Population Interview database, 2015-2019.

Inset 2 documents anonymous testimony of a torture victim’s relative. Detainees’ family members have often been present for or close to acts of torture and offered valuable information about these crimes. The testimony also portrays a serious omission on the part of the court-appointed attorney, who allowed the torture to continue.

INSET 3

INTERVIEW WITH INMATE 2 AT CORRECTIONS CENTER 7

(ARCHIVE NOMENCLATURE, NOT CENTER NOMENCLATURE)

REFERENCE 8 - 1.03% COVERAGE

They took me down to some ditches and they said, “Ok you mother-fucker, where’s the body?” “What body? I don’t know what the hell you are talking about.” And they start beating me and they go in and they say “There are some bones down there,” and I’m like, “Mother-fucker, you’re not going to say you found something and come up with more charges.” And they say, “They’re cow bones. So get down on your knees, mother-fucker. Where is the poor sucker?” “I don’t know anything, for God’s sake, what more can I say?” So they put one of those long handguns here on my head and another here at my knees. “Ok, you son of a bitch, now you’re really going to sing, give me that telephone and tell that other son of a bitch to pick up that asshole’s wife and kids because they’re going to “chop them up like hamburger.” I was trembling and I started to cry and cry and they said, “Ok, pass me that shovel,” and they’ve got me on my knees and cuffed, and they made me dig a hole. “Dig your own grave,” they told me. And I said, “dear God, if it’s your will carry me off here,” and I began to dig and dug a hole maybe half a meter and then they started beating and kicking me when a ministry official came and said to me, “Leave that shit behind and come here!”

Source: Prison population interviews database, 2015-2019.

This testimony describes a rural torture method that has greater impact among Mexico's indigenous and rural-dwelling populations: that police make detainees "dig their own graves" and bring their family members to look on. The traumatic impact this has on tortured individuals and their families, also subject to torture, is devastating. In this case the person was not executed extrajudicially but in various cases it has happened and victims are buried, alive or dead.

INSET 4

TESTIMONY OF TORTURE BY A POLICE INVESTIGATOR

(ANONYMOUS)

REFERENCE 1 - 0.17% COVERAGE

Before that there's an interrogation and if it works for me I show up and if not I'll beat him up or toss him.

REFERENCE 2 - 0.74% COVERAGE

How long was the longest suspect interrogation I was ever in? Well, that's extralegal and we had a guy and I could hold on to him for as long as I needed; you don't have to justify it or anything. We had one person locked up for a week. Where? Wherever I happened to be. Any place would do, could have been a bathroom, some little cubby-hole. None of that stops us in federal jurisdiction.

Source: Mexico police officers interviews database, 2015-2019.

The excerpted testimonies in Inset 4 are a sample of various police testimonies the WJP team collected between 2015 and 2019, that document torture and ill-treatment practices, are both generalized and normalized practices, as well as other illegal violent practices found in Mexico's criminal investigation methods. The interviewed officer in this case (whose gender is not identified) admits to having illegally arrested an individual and subjected him or her to week-long torture.

ACTS OF INVESTIGATION AND THE PREVALENCE OF TORTURE OR ILL-TREATMENT

This section explores levels of torture or ill-treatment and their relationship to capture-protocols and investigative activities. To this point we have documented numeric evidence of the enormous prevalence of torture or ill-treatment and who its perpetrators are; its main purpose is extracting incriminatory evidence. Torture or ill-treatment practices have been expressly described. It has also been documented that torture is dysfunctional for criminal justice ends since it creates palpable misidentification errors with those held guilty. In fact, the offenses traditionally considered more aberrant represent a greater proportion of prison population with wrongful convictions.

The risk of committing identification errors is greater in cases of torture or ill-treatment has also been documented. Such data should lead us to contemplate what should be done to eliminate torture or ill-treatment as a criminal investigation technique, given that these prevalent unlawful acts necessarily lead to innocent persons' imprisonment. Undoubtedly, impunity is not reduced by imprisoning the innocent. What, then, is to be done? This section contains part of the answer. Several torture correlates are analyzed against a variety of norms that regulate:

- arrest protocols;
- searches of detained persons or their vehicles;
- suspect interrogations;
- witness interrogations.

In light of the amount of illegal violence that, thanks to ENPOL data, is observed in Mexico's criminal investigation area, several hypotheses may be formulated: (a) the content in regulation for detentions and these investigative acts is lax, or (b) compliance with current regulations is lax, or (c) a combination of both possibilities. Below, a summary of major findings may be seen on issues surrounding the investigative acts ENPOL measured. Appendix II includes a summary of recommended issues INEGI should measure for in ENPOL.

Below inset 5 documents how torture is inversely related to better regulations compliance. Inset 5 concentrates and systematizes WJP team findings based on ENPOL data review and analysis as explained next.

INSET 5

WJP TEAM MAJOR ENPOL FINDINGS

INVESTIGATIVE ACT

FACTORS INEGI MEASURED

MAJOR FINDINGS AND THEIR RELATIONSHIP TO TORTURE OR ILL-TREATMENT

ARREST

What justifies the arrest?

Unjustified arrests increase prevalence of torture or ill-treatment.

If the arresting authority identified itself "as an authority" at the moment of detention.

When the authority identifies itself, there is less risk of torture or ill-treatment.

Use of force during arrest.

If force is used there is greater risk of torture or ill-treatment.

Transit time following arrest.

Longer transit time or time spent detained at the Public Prosecutor Office are associated with a greater torture prevalence.

Where detainees were taken after arrest.

The detention's duration including transit, time at the Public Prosecutor Office and preventive incarceration.

If detainees do not appear before judges, there are greater chances of torture or ill-treatment.

WITNESSES

Did authorities pressure witnesses to be other persons' accusers?

That INEGI interviewees said they were pressured is associated with higher risk of torture.

If witnesses were used for against the defendant.

If witnesses were deprived of their liberty.

Using persons deprived of liberty as witnesses is associated with more identification errors (i.e., innocent persons).

CRIMINAL LINEUPS

In what way were detainees identified by another witness? Specifically, in lineups, was the detainee presented alone or among others who served to distract witnesses and were they presented simultaneously or sequentially?

Using sequential criminal lineups is associated with greater prevalence of torture or ill-treatment, a surprising finding. A sequential lineup is rare (despite being legally established in CNPP legislation). A possible explanation is that sequential lineups are only made in high-impact cases.

INTERROGATIONS

The possibility of contact with families, attorneys and consulates while in public prosecutor custody.

Contact with the outside world is associated with fewer possibilities for torture or ill-treatment.

Was an attorney present during the interrogation?

The presence of an attorney during public prosecutor interrogations is associated with less torture or ill-treatment.

Suspects were told of what they were accused.

Knowing what one is accused of is associated with less torture or ill-treatment.

If authorities took down precisely what was said.

Use of exact registries is associated with less torture or ill-treatment.

If detainees were pressured to give alternative accounts.

Coercion is associated with more torture or ill-treatment.

If the detainee confessed; why the detainee confessed and is the confession false.

False confessions are associated with more torture or ill-treatment.

Did the public prosecutor or the arresting officer identify themselves as authorities?

That authorities identify themselves is associated with less torture or ill-treatment.

Were detainees questioned in transit or at the Public Prosecutor Office?

In-transit questioning is associated with greater risk of torture or ill-treatment.

CORRUPTION

Was money requested whether in the context of the arrest or transit or while under public prosecutor custody; how much was asked and for what purpose?

Corruption is associated with more torture or ill-treatment above all when bribes are requested in exchange for freedom.

Source: WJP, from ENPOL 2016 data.

Below WJP findings are discussed and explained in the same order as they appear in Inset 5. It will be argued with each finding's review that non-compliance to regulations, guidelines and protocols is related to the prevalence of torture or ill-treatment and the three abovementioned hypotheses will be contrasted.

Searches and detentions

In condensed form, Inset 6 (below) portrays the normative elements of the investigative act known as *search*. Appendix 1, in the measurements section, presents a more complete version. In Inset 6 it can also be observed that the act's normative elements touch on documentation obligations, motivations behind acts, rules regarding the use of force during these acts and self-identification requirements.

INSET 6

NORMATIVE COMPONENTS FOR SEARCHES

INVESTIGATIVE ACT	POLICE FUNCTION	POLICE OPERATION	CLEAR NORMATIVE PRECEPTS IN CNPP LEGISLATION
SEARCHES	What motivates the search and what empowers the authority to undertake it?	Must the authority offer detainees legal, and evidence-related reasons to back up their power to conduct searches and express what the search is looking for?	No.
	How is the search documented?	Must authorities create a certification of search outcomes? What must it include? Should the act be real-time video recorded? To whom should such documents, videos or recordings be delivered and in what timeframe?	No.
	Use of force during searches.	Are there rules relevant to the subject's consent? Do those rules allow use of force during a search if the subject refuses consent? Who oversees compliance with these rules?	No.
	Who executes the action?	How much information should authorities provide to identify themselves with search subjects? Is announcing the institution sufficient or should authorities state names, ranks and badge numbers?	No.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

All of the above are parameters that, for example, the United Kingdom's *Police and Criminal Evidence Act* as well as legislation in OECD member states contemplate amply. But in Mexico—as noted in WJP's summary revision for the present report—there are almost no legislative parameters established for searches of individuals, vehicles or private premises except the guidelines entitled *Procedimientos Sistemáticos de Operación*. This despite constitutional precepts and international treaties Mexico has ratified that prohibit torture, ill-treatment and due-process violations.

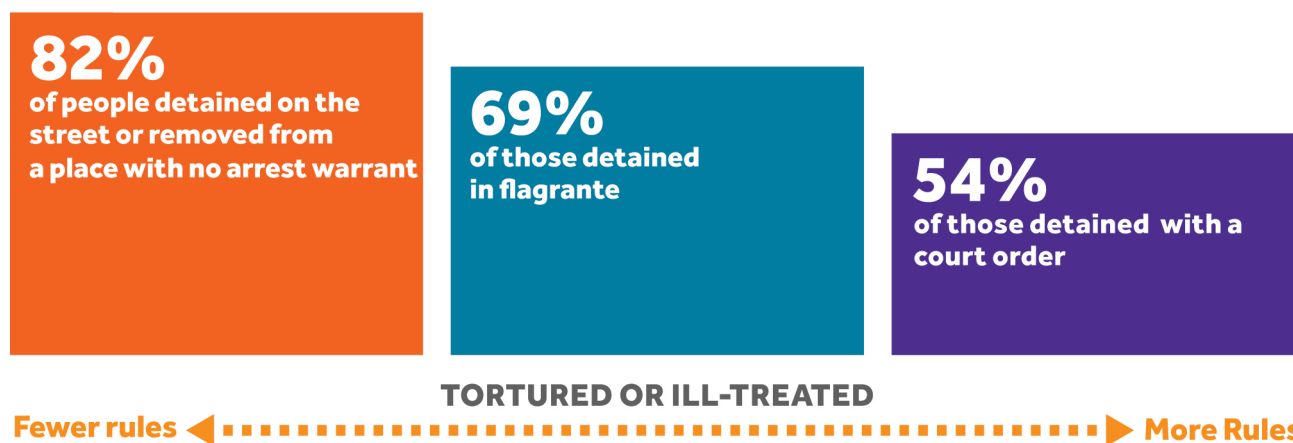
The ENPOL explores what motivated individuals' arrest, presupposes that they are detained in *flagrante*, immediately following the crime's commitment or under an arrest warrant. These are the parameters the Constitution establishes for an arrest to take place and are the same as appear in the INEGI survey. Nevertheless, the survey did not foresee that the arrest could be derived from a search. This is relevant in that, as will soon be seen, these four options are highly related to the prevalence of torture or ill-treatment. "None of the above" is in fact the option that most frequently involves torture or ill-treatment.

Graph 11 portrays the prevalence of torture or ill-treatment among 82 percent of those who were detained in the street or who were removed from some place without an arrest warrant. This type of detention takes place in situational or institutional environments that evince little adherence or respect for legality. Additionally the prevalence of torture or ill-treatment is also high (69 percent) among individuals arrested in *flagrante*. Finally, the torture or ill-treatment prevalence percentage when detainees select "none of the above" as their response on the INEGI survey is 48 percent. It's possible to find among those who respond "none of the above" individuals detained through searches. If INEGI incorporated this variable into question responses, it would be possible to have information on the prevalence of torture or ill-treatment among populations detained as part of that investigative act.

GRAPH 11

MEXICO 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT DURING ARREST

BY ARREST TYPE



Note: Those detained in flagrante were arrested committing the offense of which they are accused or immediately following the offense. Universe: 179,018 persons deprived of liberty with no arrest warrant; 72,835 detained in flagrante; and 23,494 detained under arrest warrant during the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Considering data in Graph 11, less prevalence of torture or ill-treatment is observed when there is greater adherence to rules. In contrast these unlawful acts' prevalence increases when there is less adherence or when such rules do not exist (for searches). The greatest prevalence of torture or ill-treatment coincides with scenarios in which the greatest discretionary margins reside:

non-warranted arrests. Put another way, in arrests that require greater rule adherence and more effort to persuade judges, for instance, a lesser prevalence of torture or ill-treatment is observed. Based on the above, one way to mitigate torture or ill-treatment is to create more and better regulation to guide arrests as well as the ways in which major criminal investigation acts must be carried out in Mexico.

Witnesses

In Mexico, unlawful violence in the context of confessions has been the largest focal point in most public policy since its use to extract admissions of guilt has been well documented for some time. One unseen consequence of this excess of attention paid to confessions is that witnesses enjoy just as few physical-integrity protections as the interrogated accused—or no protections whatsoever. ENPOL survey data demonstrate that every investigative act uses violence to create incriminating evidence; using individuals as accusers or witnesses is no exception since one-third of all eyewitnesses are under public-prosecutor custody. This is a relevant point since accusers, and in some cases, eyewitnesses are the most relied-upon evidence and frequently the sole evidence presented by the prosecution. If violence has to become a part of making an accusation, that accusation is neither reliable nor legal.

TABLE 6
PREVALENCE OF TORTURE OR ILL-TREATMENT DURING PUBLIC PROSECUTOR CUSTODY
ACCORDING TO DEGREE OF COERCION TO ACCUSE OTHERS (2006-2016)

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE ACCUSED WAS PRESSURED TO ACCUSE SOMEONE ELSE							
	YES		NO		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%
YES	51,330	95%	60,572	47%	113	8%	25	3%
NO	2,438	5%	67,238	53%	1,377	92%	944	97%
TOTAL	53,768	100%	127,811	100%	1,489	100%	969	100%

Source: Produced by WJP using INEGI data, 2016 National Survey of People Deprived of their Freedom.

Table 6 data show that 95 percent of those accused who were coerced into denouncing others suffered some torture or ill-treatment. This contrasts with a prevalence of ill-treatment among those who were not coerced to accuse anyone: 47 percent, nearly half.

**TABLE 7
PREVALENCE OF TORTURE OR ILL-TREATMENT WHILE IN PUBLIC PROSECUTOR CUSTODY,
BY IDENTIFICATION LINEUP EMPLOYED (2006-2016)**

Persons deprived of liberty

TORTURE OR ILL-TREATMENT	THE ACCUSED WAS INTERROGATED DURING THE ARREST									
	HE/SHE WAS SHOWN ONLY TO THE WITNESS		HE/SHE WAS SHOWN IN THE LINEUP, WITH OTHERS		HE/SHE WAS SHOWN WITH OTHER PEOPLE IN A SEQUENTIAL LINEUP		DON'T KNOW		NO ANSWER	
	N	%	N	%	N	%	N	%	N	%
YES	27,447	58%	6,842	66%	1,932	73%	13,947	56%	1,853	56%
NO	20,265	42%	3,462	34%	707	27%	1,154	44%	1,429	44%
TOTAL	47,713	100%	10,304	100%	2,640	100%	15,101	100%	3,282	100%

Source: Produced by WJP using INEGI data, 2016 National Survey of People Deprived of their Freedom.

The sole criminal lineups that met CNPP requirements are the sequential ones. Table 7 demonstrates they are associated with the highest levels of torture and ill-treatment. 73 percent of those who were presented in a sequential suspects and decoys presentation were tortured or ill-treated.

Confessions and statements

The act of obtaining confessions and statements occurs starting with arrest, not just at the Public Prosecutor Office. ENPOL data point to the fact that whether these interrogations or interviews occur at or on the way to the Public Prosecutor Office, these unlawful acts are associated with a high prevalence of torture or ill-treatment. Additionally it is observed in ENPOL information that interrogations are associated with false statements (confessions or otherwise).

Of those who made statements at the Public Prosecutor Office 46 percent declared their guilt; approximately 17,292 declared themselves guilty. Of those, only 7847 did so in recognition of the facts of the case. Half the group that recognized the facts of the case, in the main analysis group, was tortured; the other half was not. Only 3927 who were not tortured confessed to events at the Public Prosecutor Office. There is a percentage of those who were tortured, who confessed to recognizing the facts of the case and not due to torture or ill-treatment.

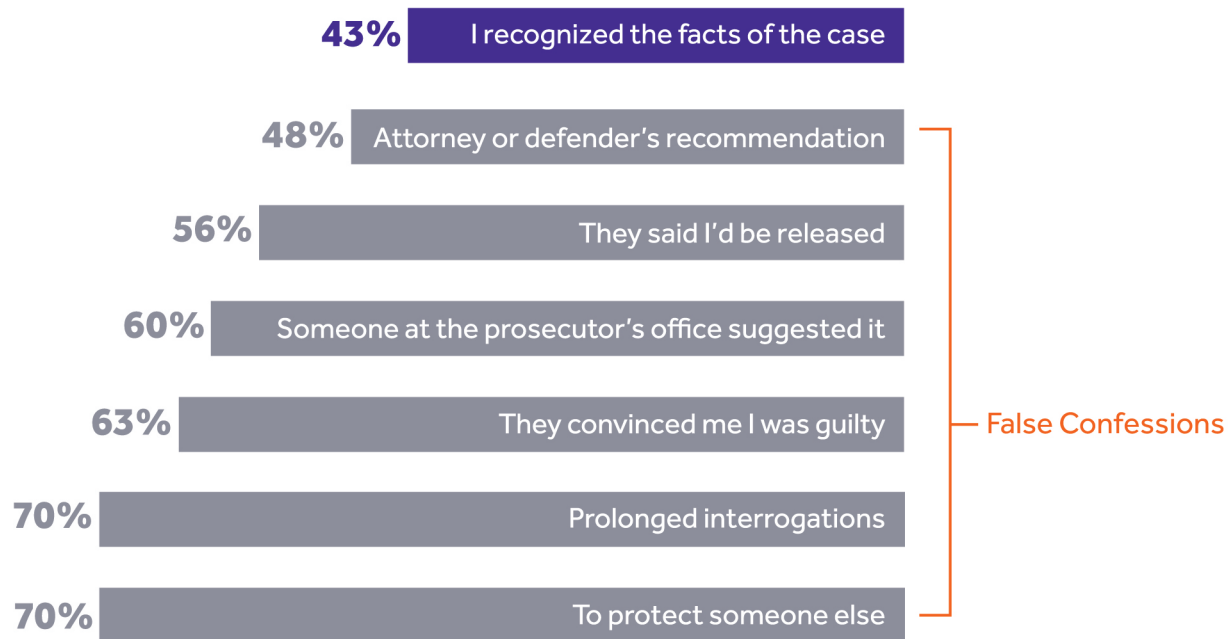
In total, 43 percent of the population states it declared itself guilty because it recognized the facts of the case; the remainder did so for reasons other than the truth, such as to wit, at an attorney's recommendation, because of were pressured or threatened and due to the interrogations' long duration. Graphic 12 establishes a relationship between different reasons for confessing guilt in statements submitted to the public prosecutor and the frequency with which these persons were tortured or ill-treated during custody at the Public Prosecutor Office. Note as well that false confessions come from those who suffered the most frequent torture or ill-treatment.

The first implication is that people who confessed to crimes of which they were accused and were telling the truth were less ill-treated; that is, the people who are most being tortured or ill-treated are the innocent, perhaps because they are the ones who resist most when asked to confess to crimes. Therefore torture or ill-treatment do not work to extract confessions because such confessions are false. From 2006-2016, 30 percent of all people deprived of liberty reported that the accused party presented their confessions as evidence. This indicates that processes for arresting, accusing and convicting individuals are generally not reliable.

GRAPH 12

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT DURING PUBLIC PROSECUTOR CUSTODY, BY MOTIVES FOR CONFESSION

PERSONS DEPRIVED OF LIBERTY WHO ADMITTED GUILT IN STATEMENTS TO THE PUBLIC PROSECUTOR



Universe: 52,534 persons deprived of their liberty who declared themselves guilty in the 2006-2016 period.

Source: Produced by WJP using INEGI data, 2016 National Survey of People Deprived of their Freedom.

INEGI measured a number of safeguards related to unlawful use of violence and pressure in investigative acts such as interrogations or interviews. They include access to and confidential communication with attorneys, from the time of arrest; the detainee's right to notify relatives; the right to a medical examination; the right to know what actions have been attributed to him or her; and to know the identity of the person conducting the interrogation. As can be seen in Graph 13A, if the population is divided between those that enjoy these rights and those who do not, a major difference in the prevalence of torture or ill-treatment is also observed in almost every case.

GRAPH 13A

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR MISTREATMENT AND DUE-PROCESS ELEMENTS DURING PUBLIC PROSECUTOR CUSTODY

PERCENTAGE OF LIBERTY-DEPRIVED VICTIMS AT PUBLIC PROSECUTOR OFFICE



Universe: 184,037 liberty-deprived persons under public prosecutor custody in the 2006-2016 period.

Source: Produced by WJP using INEGI data, 2016 National Survey of People Deprived of their Freedom.

Didier Fassin (2017: 219), one of the most important ethnographic sociologists dedicated to the study of prisons indicates—based on longitudinal-field research with liberty-deprived populations in France—that a lack of respect for due process for socially more vulnerable individuals (the poor, immigrants) in criminal justice and penitentiary systems has to do with political interest in controlling those groups. We must not lose sight of the fact that the prevalence of torture or ill-treatment linked to due process, which ENPOL data document, does not just seek to extract confessions or generate accusations but also seeks social control over those populations once they enter penitentiaries.

Based on data in Graph 13A data it can be seen that in terms of the prevalence of torture or ill-treatment the greatest difference occurs among foreign populations accused of crimes. The prevalence of torture among foreigners who had the chance to contact their consulates was 45 percent, whereas the prevalence of these illegal actions among foreign populations that could not contact their consulates came in at 69 percent, i.e., a 24-percentage-point difference.

Additionally, a 23-percentage-point difference is observed in the frequency of torture or ill-treatment among populations that were able to contact an acquaintance, relative or trusted person and those that could not. And there was a 21-point-percentage difference in torture

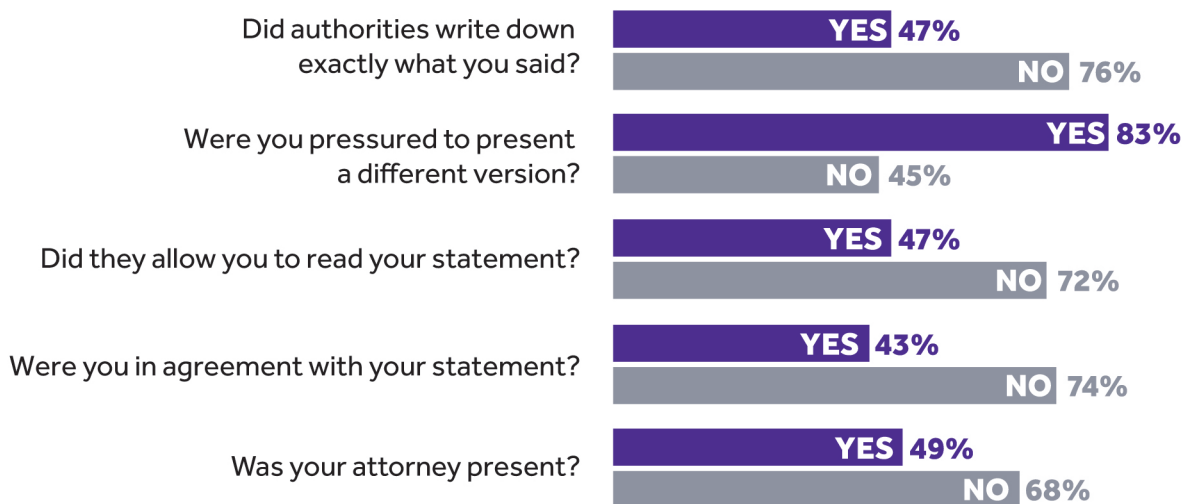
or ill-treatment frequency between people who managed to contact an attorney and those who could not. The numbers reveal important differences with regard to access to judicial protections and the prevalence of torture or ill-treatment.

Frequency of torture or ill-treatment varies 16 percentage-points between those who contacted a family member and those who did not. The variation decreases notably to only 5 percentage-points between those who were with public prosecutor's agents and those who were not. Finally there is a mere 1 percentage point difference between those who were informed of who was accusing them and those who were not.

GRAPH 13B

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT AND DUE-PROCESS ELEMENTS DURING STATEMENT RENDITION AND SIGNATURE

PERCENTAGE OF LIBERTY-DEPRIVED VICTIMS AT THE PUBLIC PROSECUTOR OFFICE



Universe: 184,037 liberty -deprived persons under public prosecutor custody in the 2006-2016 period.

Source: Produced by WJP using INEGI data, 2016 National Survey of People Deprived of their Freedom.

According to specialized literature (OCDE-Fundar, 2006; Zepeda, 2003) statements made at the Public Prosecutor Office do not meet minimum process standards in most cases. Graph 13B notes one hopeful frequency: important differences prevail when process regulations are followed and when they are not. A smaller prevalence of tortured or ill-treated persons is reported (29 fewer percentage points) when authorities take down exactly what people declare. This once again underlines the importance of objective records at all times during investigative acts.

The prevalence of torture and ill-treatment in other due-process variables exhibits similar frequencies to the previously discussed variable. There is only an important difference when a detainee is forced or pressured to offer another version of the facts of the case. In such cases the prevalence of torture rises to 83 percent.

Medical examiner

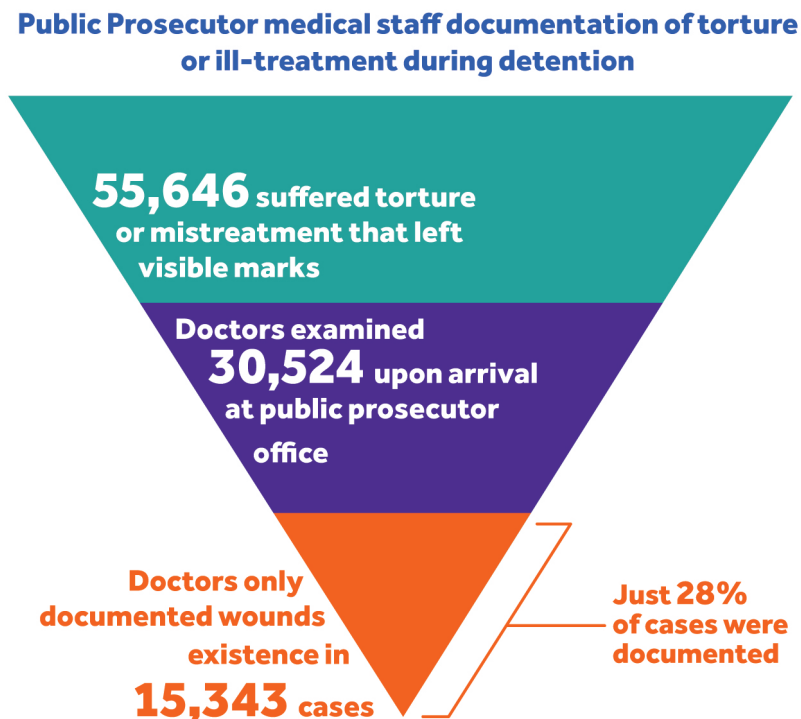
One of the most important investigative acts when it comes to protecting detainees is the examination court physicians administer to them before and after they make statements. For years this was the main public-policy measure for preventing evidence-extraction through violent means. Those that were tortured or ill-treated tended not to be examined by doctors.

Graph 14 portrays only those persons who reported having been subjected to some kind of evident torture or ill-treatment physicians should have documented. These forms of torture and ill-treatment included kicks and punches, electric shocks, wounds from discharged firearms, burns, blows from objects, knife-wounds and rape. As can be observed, of all those subject to torture or ill-treatment, only in 28 percent of cases were any such injuries recorded. It must be clarified that physicians are employees of their respective prosecution offices, which may explain high incidence of underreporting physical injuries.

GRAPH 14

MEXICO, 2006-2016: PREVALENCE OF DOCUMENTING SIGNS OF TORTURE

PERCENTAGE OF PERSONS BEARING MARKS OF TORTURE OR ILL-TREATMENT THAT FORENSIC PHYSICIANS EFFECTIVELY DOCUMENTED



Kicks or punches, electric shocks, gunshot wounds, burns, blows with objects, stab wounds and rape are considered torture or abuse that leave marks. Universe: 184,037 people deprived of liberty who stayed in the Public Prosecutor's Office from 2006-2016. Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Time in transit or in custody at the Public Prosecutor Office

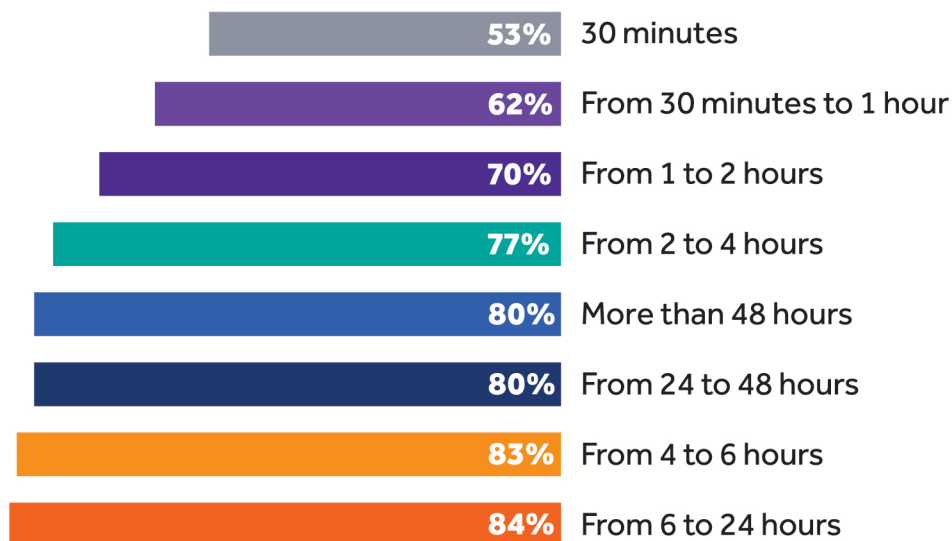
Graph 15 shows, the longer it takes to get someone to the Public Prosecutor Office, the prevalence of torture and ill-treatment expands. Prolonged, unsupervised transit is the most prevalent scenario for these unlawful actions. From 2006 to 2016, only 17 percent of persons deprived of liberty reached the public prosecutor or a criminal judge's office in fewer than 30 minutes. The conditions surrounding transit and the high frequency proportion with which they occur suggest clandestine behaviors, illegality and use of coercion as a tool to possibly extract information from detainees, information that cannot be reliable in these situations but that nonetheless tends to be used in trials.

Regarding the length of stays at the Public Prosecutor Office, from 2006-2016, 64 percent of those handed over to prosecutor custody were detained there for more than 24 hours. Most frequently, those obliged to remain more time at the Public Prosecutor Office are more likely to be victims of torture and ill-treatment while in custody. The graph portrays that 80 percent of individuals brought to the Public Prosecutor Office who spent more than 48 hours in custody were tortured or ill-treated; whereas 53 percent that spent up to 30 minutes were tortured or ill-treated.

GRAPH 15

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT DURING DETENTION, BY TRANSIT PERIOD TO PUBLIC PROSECUTOR OFFICE

PERSONS DEPRIVED OF LIBERTY



Universe: 187,784 persons deprived of liberty who were arrested in the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

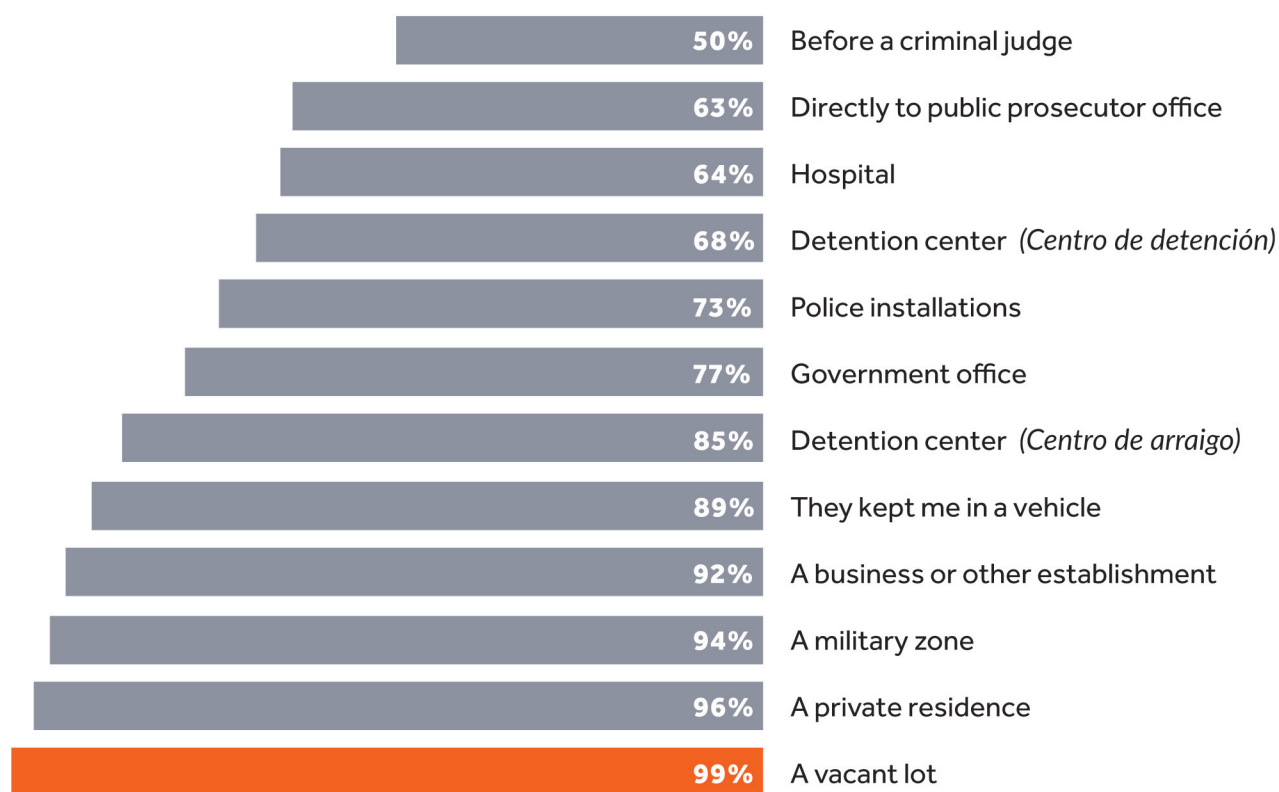
Where they took them

Detainees' immediate appearance before criminal judges or public prosecutors is a process guarantee that has important consequences for preventing torture or ill-treatment. Detainees who were taken to other places between 2006 and 2016 present a greater incidence of torture or ill-treatment during arrest and transit. Of those that were taken to vacant lots, 99 percent were tortured or ill-treated. These transit conditions and the high frequency with which they occur suggests clandestine behavior, illegality, and the use of coercion as a tool for extracting information from detainees, information that cannot be reliable in such a scenario.

GRAPH 16

MÉXICO, 2006-2016: PERCENTAGE OF TORTURED OR ILL-TREATED PERSONS, BY PLACE TO WHICH THEY WERE TAKEN AFTER ARREST

PERSONS DEPRIVED OF LIBERTY



Universe: 187,784 persons deprived of liberty that were arrested during the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

CIDE'S Encuesta Realizada a Población Interna en Centros Federales de Readaptación Social del CIDE (Survey Administered to Inmate Populations at CIDE Federal Social Re-Adaptation Centers; 2012: 65) revealed that 47.6 percent of the surveyed prison population (sentenced for federal offenses) was taken to a military installation after arrest, and not to the Public Prosecutor Office, which

indicates this practice's high incidence, at least up to 2012. Considering the previous information, added to the increasing militarization of public safety in Mexico, makes it important to note that ENPOL documents a prevalence of torture and ill-treatment at 94 percent when detainees are transported to military bases. This is particularly worrying in light of the new formation of a Mexican National Guard whose composition and senior leadership is primordially drawn from the army and navy, as part of a climate of greater public-safety militarization in Mexico. In any case, the prevalence of detainee torture or ill-treatment increases considerably when they are not transported directly to the Public Prosecutor Office or before a criminal judge.

CONSEQUENCES

Based on statistical frequencies and the previously analyzed qualitative data, it can be observed that torture or ill-treatment have corrupting effects on evidence. Additionally, torture and ill-treatment could have a corrupting effect on the police themselves as well as judicial proceedings. The next section presents quantitative evidence from ENPOL concerning police corruption and its relationship to torture data.

GRAPH 17A

DID THE PERSON WHO ARRESTED YOU REQUEST MONEY OR SOME OTHER BENEFIT?

MEXICO, 2006-2016: PERCENTAGE OF PERSONS TORTURED OR ILL-TREATED DURING DETENTION OR TRANSIT



Universe: 47,944 persons deprived of liberty who state that the person who arrested them requested money and 138,934 who stated the arresting agent did not request money in the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

26 percent of persons deprived of liberty (47,944) stated the person who arrested them attempted to appropriate a benefit or directly asked for some benefit. As can be seen in Graph 17A there is a 91 percent prevalence of torture or ill-treatment among those who reported authorities did not ask for money or some other benefit. There is additionally a 66 percent prevalence of torture and ill-treatment among populations that were not subject to authority requests for money or some other benefit. 12 percent of persons deprived of liberty stated public prosecutor authorities sought to appropriate something that belonged to them or requested some benefit. Graph 17B portrays that differences in torture and ill-treatment frequency, during public prosecutor custody, range 29 percentage points between persons from whom authorities requested money and those from whom did not.

GRAPH 17B

DID AUTHORITIES REQUEST MONEY OR SOME OTHER BENEFIT?

MEXICO, 2006-2016: PERCENTAGE OF INDIVIDUALS TORTURED OR ILL-TREATED WHEN IN PUBLIC PROSECUTOR CUSTODY



Universe: 21,349 persons deprived of liberty who stated agents at the public prosecutor's office requested money and 160,529 who stated they did not in the 2006-2016 period.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Using police or investigative powers to obtain unlawful gains is a distortion of those powers' objective. The high prevalence of persons deprived of liberty from whom state authorities requested money raises questions on how many detainees paid the requested amount and today walk free? The ENPOL survey offers a glance of police corruption's prevalence, though with out precision since it can be presumed that those who successfully bribed authorities did not figure in the INEGI sample.

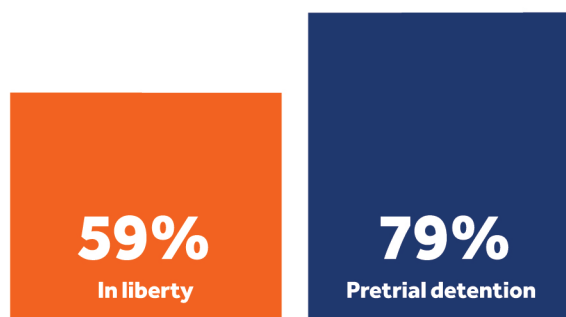
Torture or ill-treatment more frequent with pretrial detention

Torture has a corrupting effect on judicial proceedings. Not only does it destroy the reliability of evidence, since for judges it is difficult to assess the incriminating evidence presented to them, but it also alters how preventive measures are selected. In Graph 18 it may be observed that there are thirteen differential percentage points for the prevalence of torture among those who faced trial on bail and those who were subject to pretrial detention.

GRAPH 18

MEXICO, 2006-2016: PREVALENCE OF TORTURE OR ILL-TREATMENT BY STATUS WHILE WAITING FOR TRIAL

TRIED PERSONS



Universe: 126,250 persons deprived of their liberty who were tried from 2006 to 2016.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

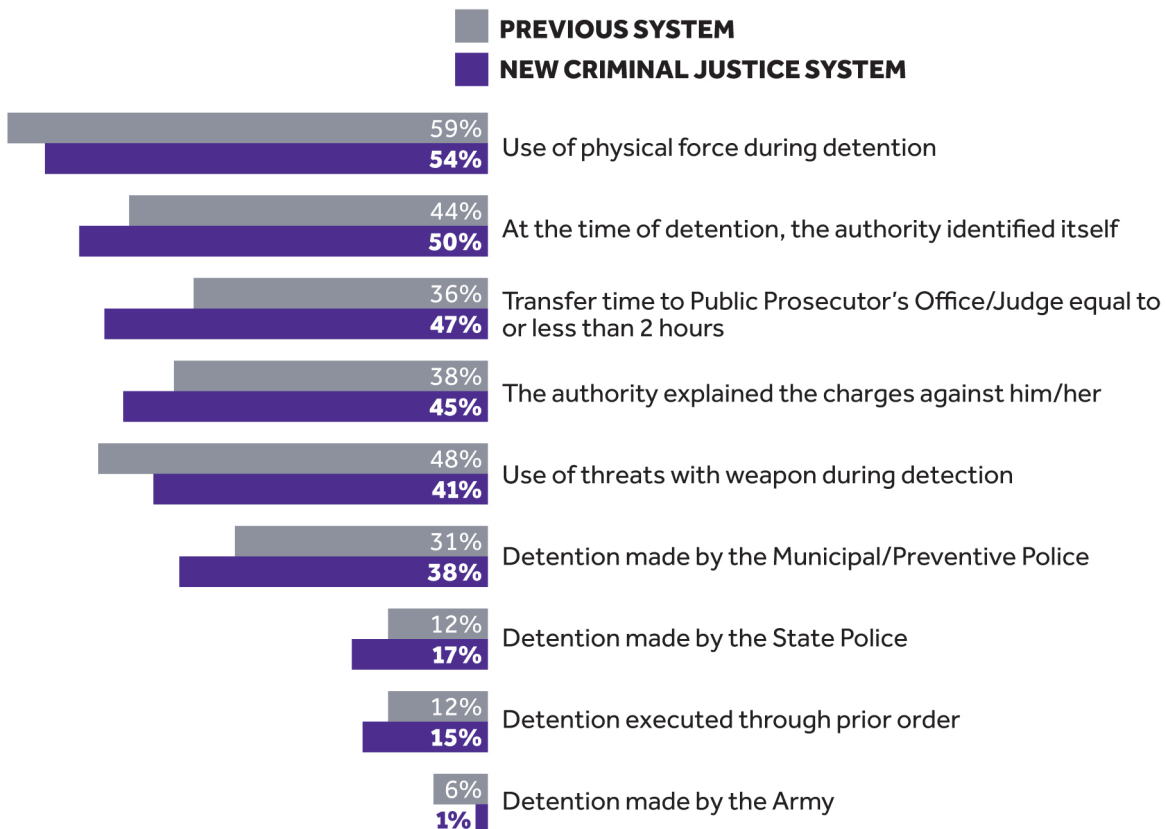
Changes with the New Criminal Justice System

With the gradual entry into force of the New Criminal Justice System, practically throughout Mexico there is a decrease in torture and ill-treatment. Graph 19 shows substantive changes in due process from the criminal procedural reform of 2008.

GRAPH 19

MEXICO: SUBSTANTIAL IMPROVEMENTS DURING DETENTION AFTER THE 2008 REFORM

REPORTED BY PEOPLE DEPRIVED OF LIBERTY



Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

One of the most important data provided by ENPOL in this area is that an 11 percent lower prevalence is reported when detainees are transferred, in less than two hours. As documented above, the longest transfer periods of time are related to the higher prevalence of torture or ill-treatment of detainees. Similar prevalences can be observed in other key areas for the prevention and mitigation of torture or ill-treatment: the use of physical force during detention, identification of the authority during detention and explanation of the charges that are imputed.

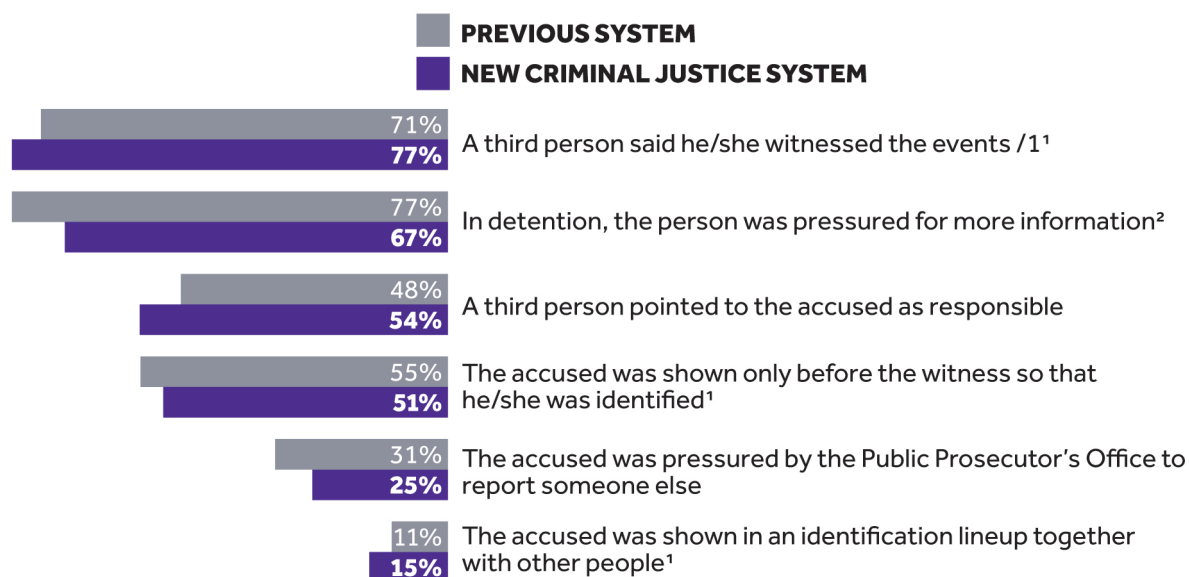
Graph 20 (below) shows lower prevalence of violence in obtaining testimonies. In the prevalences of this graph it is possible to observe greater veracity in the use of testimonies. For example, the

data shows that in the new system there is a higher prevalence of witnesses who actually witnessed the events. If this prevalence is confirmed in practice, the reliability of the most used evidence is increased. However, it can be seen the illegal violence that prevails against witnesses in order to accuse others, which again confirms what has prevailed throughout the report: the use of violence to obtain confessions or testimonies.

GRAPH 20

MEXICO: SUBSTANTIVE IMPROVEMENTS IN THE PERFORMANCE OF EYE WITNESSES AND IDENTIFICATION LINEUPS

REPORTED BY PERSONS DEPRIVED OF LIBERTY



¹Percentage with respect to the total number of persons deprived of liberty who were pointed by a third person.

²Percentage of total persons deprived of liberty who were interrogated during detention

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

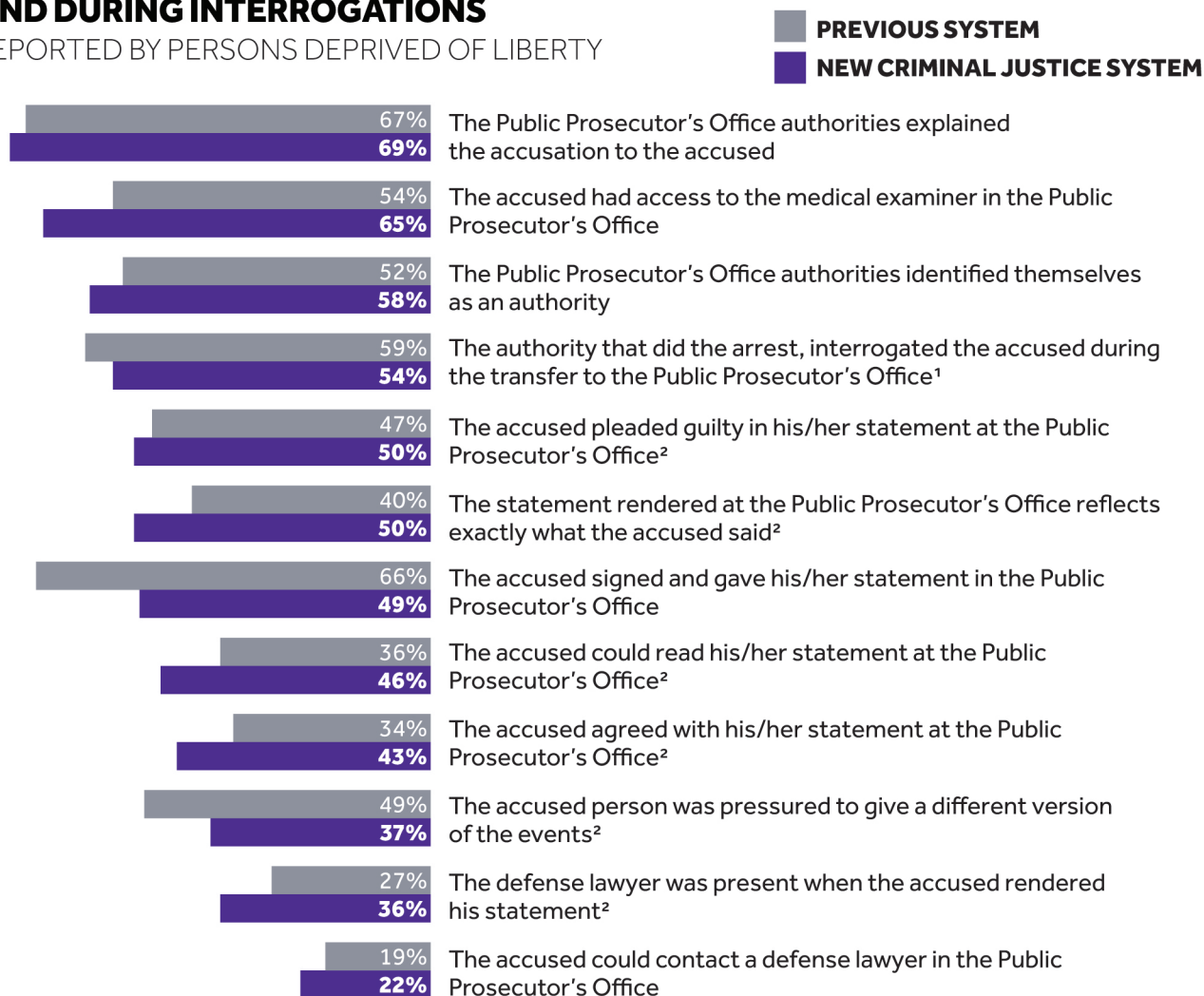
With the new criminal justice system, the rules of the game changed in terms of obtaining confessions, so it became illegal for police to interview detainees. This does not preclude, as demonstrated in the report, that confessions continue to be obtained illegally. However, some data that are going in a positive direction regarding the prevalence of torture or ill-treatment observed are shown in Graph 21.

Graph 21 shows data on the prevalence of processes aimed at mitigating violent behaviors and dependence on confessions obtained at the Public Prosecutor Office. However, the change has been very marginal. Illegal violence and coercion continue to prevail in obtaining confessions. Neither past nor recent public policies have been able to eliminate the criminal justice system's dependence on this evidence.

GRAPH 21

MEXICO: SUBSTANTIVE IMPROVEMENTS IN CONFESSIONS AND DURING INTERROGATIONS

REPORTED BY PERSONS DEPRIVED OF LIBERTY



¹Percentage with respect to the total number of persons deprived of liberty who responded about their detention.

²Percentage with respect to the total number of persons deprived of liberty who rendered and signed their statement in the Public Prosecutor's Office

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Access to the medical examiner was considerably increased; but the coverage is far from being total for each detained person. There is also no guarantee that the medical examiner will be an independent actor. Recent policies are questionable, especially the full prohibition of a confession before police officers and the elimination of their evidentiary value unless it is made in court.

Apart from the medical examiner who observes the accused before and after the interview, and the prohibition of confessions during the transfer, there is a third way not explored in Mexico, which consists not in prohibiting the confession evidence, but regulating how it should be obtained reliably by police, that is, regulate the acts of investigation on which criminal charges depend, rather than prohibit them.

Promising practices

Stanley Cohen (2001:159) describes how the Israeli government managed to normalize torture and extended administrative detention without seriously eroding his image in front of the majority of his citizens. Through a dual criminal policy, successive Israeli governments have achieved the sympathy of conservatives and the persuasion of liberals. On the one hand, the government carries out a criminal policy based on a discourse of fear in the face of terrorism that is attractive to conservative citizens. On the other, Israeli public administrations have developed a biphasic criminal policy that publicly denies what they privately know is happening, in terms of torture and illegal violence against detainees.

The contradictions of Israeli criminal policy are not so distant from those of Mexican criminal policy regarding the normalization of illegal mechanisms to obtain confessions. As documented in this report, torture or ill-treatment are illegal methods that are used quite frequently in criminal investigations. A debate on the regulation of investigation acts in Mexico is essential, because prohibiting confession, given the inescapable and enormous dependence on this evidence, produces impunity.

One of the examples about the limitations of admissibility of confession as evidence in a criminal proceeding is found in the Police and Criminal Evidence Act 1984 of the United Kingdom. Section 76 of this law states that a contested confession cannot be used as evidence in a jurisdictional proceeding, unless the prosecution proves beyond any reasonable doubt that the confession was not obtained through oppression of the person who made it or as consequence of what he/she has said or made that is plausible, under the circumstances of that moment, that any confession made under pressure is questionable.

Rudy Schelling and Nienke Scholten (2014:37) describe a professional and structured process for interviewing suspects by the Belgian police. Based on a simple regulatory framework, both solid and with due process safeguards, the interview process is divided into three main stages: preparation, execution and evaluation. Each stage has specific steps and operational protocols for police, as well as public information tools for detainees and for the rest of the citizens.

Preparation

Regarding the preparation of the interview, the ideal place to perform it is assessed, considering the possible effects of revictimization and how to avoid biases in the informant. Subsequently, the possible effects of “tunnel vision” (imprecise information) are analyzed based on the profile of the person interviewed and specific questionnaires and mechanisms are developed to generate an instrument and method that ensures the highest precision for the criminal investigation process (Schelling and Scholten, 2019: 48). Based on these considerations, an interview or interrogation plan (*verhoorplan*), which is individualized, is carried out.

Execution

First, the interview or interrogatory style and the type of questions that can be most effective

for that purpose are strategically defined. In the protocols different interview styles and the criteria for effectiveness of the type of questions and even a set of appropriate and inappropriate questions based on the profile of each suspect are accurately defined. Likewise, the criteria for a good work relationship with the person interviewed or interrogated are defined (Schellingen and Scholten, 2019: 114). It is interesting to note that a “work relationship” is given to this important investigation act. The role of the defense lawyer and the interaction and intervention scenarios are also regulated. Based on specific protocols, what is defined as acceptable pressure and unacceptable pressure is regulated, based on criteria of procedural rights and jurisprudence. A series of principles and recommendations are also established to promote the “willingness to explain” of detainees; the strategic criteria for the use of evidence. In a special and very wide section, criteria and principles are developed to interview vulnerable people. Finally, technical criteria are developed for the audiovisual recording of the interview, for the police to take notes during the interview and for the drafting of the statement.

Evaluation

For this stage, the procedures for identifying substantive evidence in a confession are precisely detailed. This includes the synthesis and analysis of the information in the interview; how understandable the information provided is; assessment criteria on how much the information presented in the interview effectively involves the suspect with the criminal act; steps to follow. Finally, evaluation and coaching procedures on police interviews that generate a feedback and reciprocal learning environment among police colleagues are established.

Promising practices in regulating acts of police investigation and mechanisms to prevent, mitigate and eradicate torture are concentrated in the municipality of Escobedo, Nuevo León, which has had a process of police reform since 2009, from a mainstreaming of a model of proximity police and civic justice. The municipality of Chihuahua also has a successful and ongoing police reform process since 2005 and in the state of Chihuahua former prosecutor Patricia González managed to reduce the incidence of torture using supervisory measures for the criminal justice operators involved, such as video surveillance cameras. The World Justice Project team develops audiovisual productions on these cases, in this report only the experience of the municipality of Escobedo in Nuevo León is included.

The police reform process in General Escobedo, Nuevo León is a long-term, complex and quite complicated process. For the purposes of this report, it is sufficient to highlight the role played by the lapel cameras used by investigative, traffic and reaction police officers in Escobedo. These three groups belonging to the preventive police of Escobedo have the most frequent and conflicting contact with citizens.

The investigative police, in adherence to the powers granted by Article 132 of the National Code of Criminal Procedures, performs investigation acts on a daily basis, based on the information and intelligence provided by the Directorate of Criminal Analysis and the Center for Command, Control, Communications and Computers (C4). The traffic police patrol the municipal roads in Escobedo and take care of traffic issues, they have a conflicting contact with the citizens due

to fines applied. The reaction police is a group specialized in tactical operations that respond to emergency calls, they take care of highly criminal areas and gangs, as well as information provided by the C4 on risks and situations in the municipality.

In an interview conducted in August 2019 to Clara Luz Flores, Municipal President of Escobedo, by the World Justice Project team, she makes explicit reference to the measures to eradicate torture in that municipality:

*The torture thing, let me tell you, what the story behind our protocol is [...] Then the policeman, we talked with him and the policeman said, "I do not, I do not torture, I do nothing because I do not. I'm a very good person". Well, if the process is like this we are going to make a protocol to [be clear about] what happens since you arrive [at the police station]? And then there, the numbers ... so you don't forget. Then when processing. -Oh, the thing is that I took him first the doctor, instead of the belongings or the photo. Then they changed the number, then there it is very clear, the one, the two, the three, the four, that is where you have to go and all the places are videotaped, there is no place that does not have a camera precisely to guarantee if there is a complaint. They were reduced to zero. That it was abuse when there was a detention, etc., to zero! [...]*⁹

As the Municipal President points out, in the Escobedo Police the spaces for detention were numbered consecutively, from the entrance to the police station, consultation with a physician registration of belongings, interview, transfer to cell, to generate a protocol that allowed informing the police officers about the steps to follow to ensure due process in detention. Each stage of this process is videotaped and the records are protected. It is a public policy that protects both citizens and police and documents evidence of any type of irregularity or ill-treatment that may occur in those spaces.

Lapel cameras constitute a deterrent to any illegal activity by Escobedo police. The police know that their cameras are activated at the start of their shift and last 12 hours on without having the possibility to turn them off. When interacting with citizens, they warn them telling them that they are carrying a camera and that they are being recorded. Lapel camera records are stored for three purposes: for use by the police institution, as evidence in the Civic Court and as a review document in the Traffic Directorate.

Although the sophisticated procedures of Belgium to regulate investigation acts are still not developed in Mexico, it is important to start with the legislative discussion of a law on police investigation acts that will eventually generate such protocols and operational guidelines. The experience in Escobedo shows that it is possible, within the framework of the powers granted by Article 132 of the National Code of Criminal Procedures to the police to carry out acts of criminal investigation, innovate with technological and public policy mechanisms to reduce the incidence of torture and ill-treatment.

⁹Interview Clara Luz Flores, August 20, 2019, WJP team. Audio, transcription and time cut.

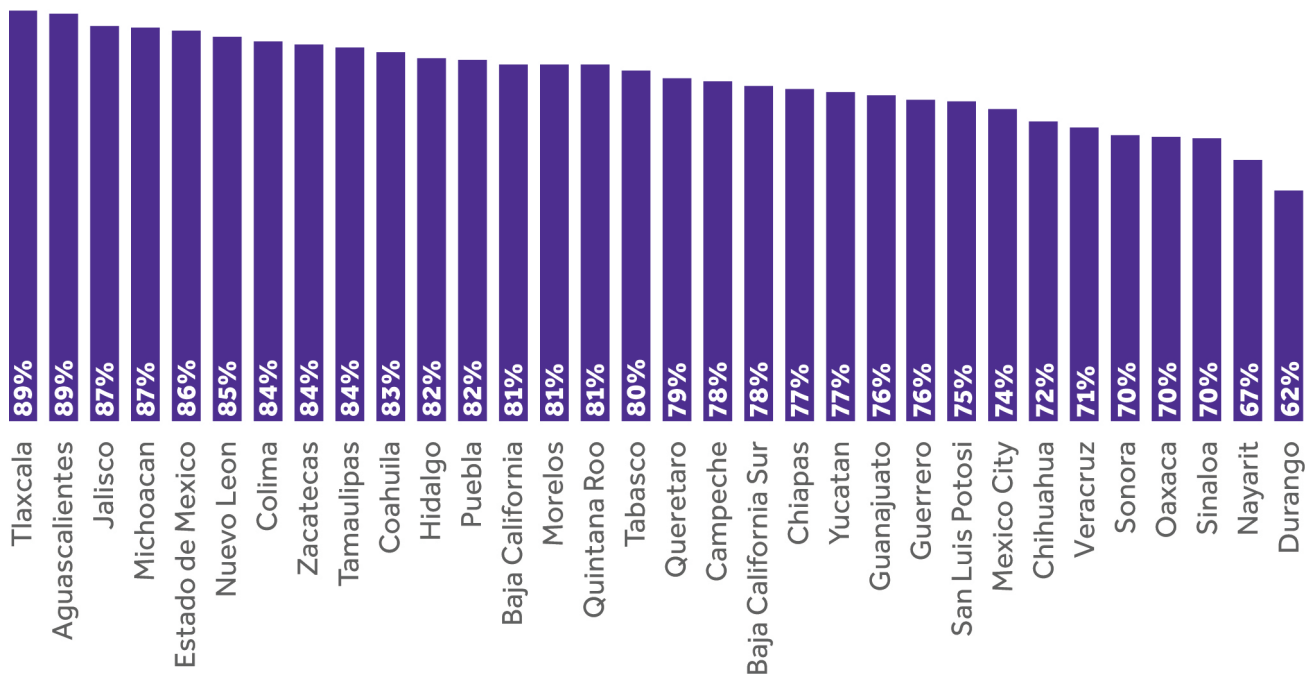
Prevalence of torture or ill-treatment in federal entities in relation to the accusatorial criminal procedure system

The analysis presented above uses data from ENPOL to observe the prevalence of torture or ill-treatment at the national level. However, it is important to know the frequency of torture or ill-treatment in each of the states. As can be seen in Graph 22, during the period from 2006 to 2016, the states with the highest frequency of torture or ill-treatment during detention, transfer or stay in the Public Prosecutor Office are Tlaxcala and Aguascalientes, while the entities with less frequency are at Durango and Nayarit.

GRAPH 22

PERCENTAGE OF PEOPLE TORTURED AND ILL-TREATED

DURING THEIR ARREST, TRANSFER OR STAY IN THE PUBLIC PROSECUTOR OFFICE



Universe: 187,784 persons deprived of liberty who were arrested during the period 2006-2016 and 184,037 persons deprived of liberty who were taken to the Public Prosecutor's Office during the period 2006-2016.

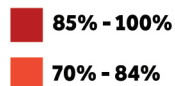
Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

In 2008, the reform to the criminal system established the basis for moving from an inquisitorial criminal process to an accusatorial one, whose implementation culminated in 2016. Although this reform was focused on the trial stage, since it constituted important safeguards, it is important to analyze whether the reform had any impact on the prevalence of torture or ill-treatment.

As noted, there are also positive changes in the state level regarding the prevalence of torture or ill-treatment. Below, the following maps show the prevalence of torture or ill-treatment of each federal entity at two points of time: before and after the implementation of the new criminal justice system.

MAP 1

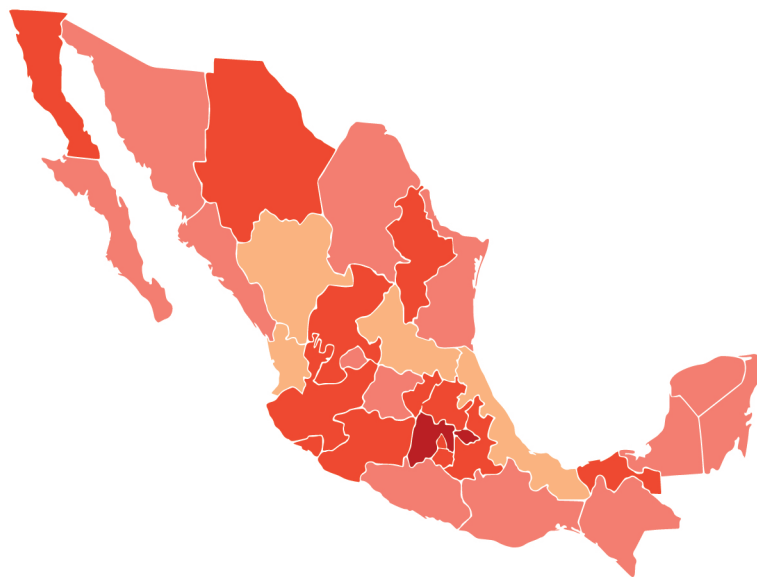
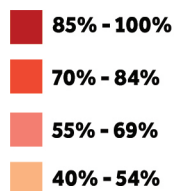
TORTURE OR ILL-TREATMENT BEFORE THE IMPLEMENTATION OF THE NEW CRIMINAL JUSTICE SYSTEM



Universe: 162,179 persons deprived of liberty under the Previous Criminal Justice System.
Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

MAP 2

TORTURE OR ILL-TREATMENT AFTER THE IMPLEMENTATION OF THE NEW CRIMINAL JUSTICE SYSTEM

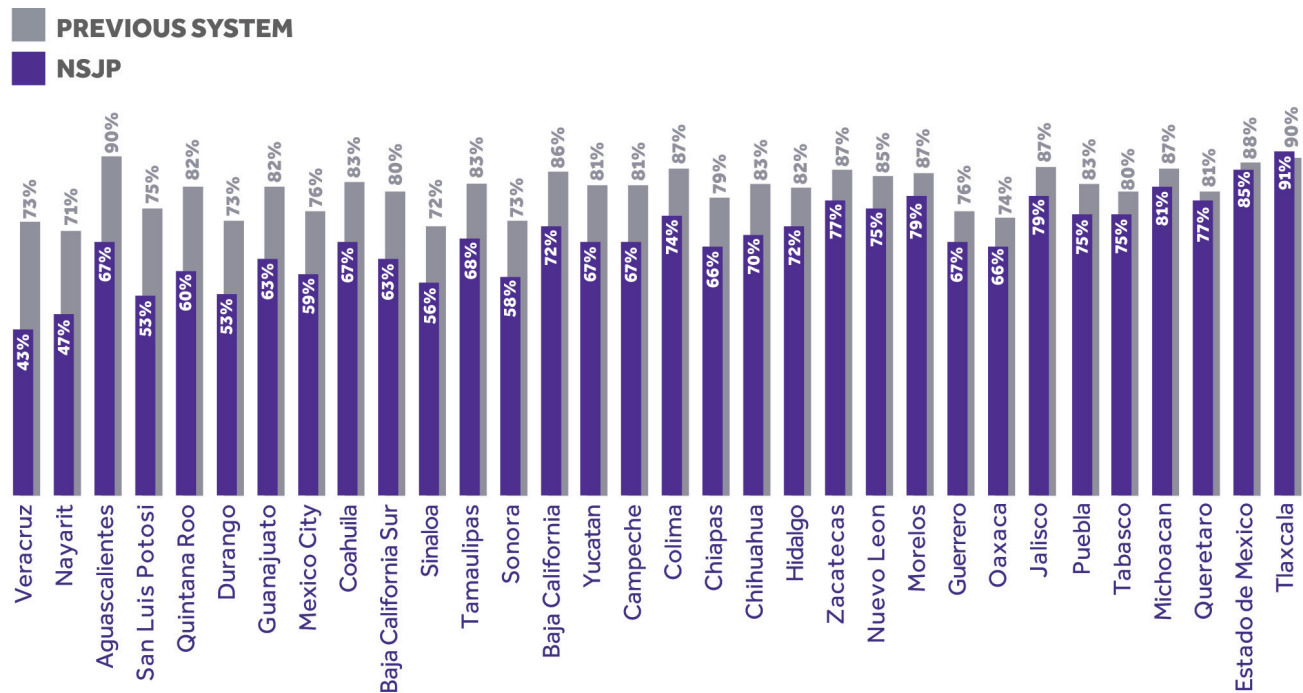


Universe: 45,070 persons deprived of liberty under the New Criminal Justice System.
Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

Finally, Graph 23 shows the levels of torture or ill-treatment of each federal entity, as well as its evolution in a more precise manner.

GRAPH 23

TORTURE OR ILL-TREATMENT DURING ARREST, TRANSFER OR STAY IN THE PUBLIC PROSECUTOR OFFICE



Universe: 45,070 persons deprived of liberty under the New Criminal Justice System and 162,179 persons deprived of liberty under the Previous Justice criminal system.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

As it can be seen in Graph 23, five states show a major change: Veracruz, Nayarit, Aguascalientes, San Luis Potosí and Quintana Roo. In contrast, the five states with minor changes (or even increases in prevalence despite the introduction of the reform) are Tabasco, Michoacán, Querétaro, State of Mexico and Tlaxcala.

THE WAY FORWARD: PUBLIC POLICY RECOMMENDATIONS

A fundamental step to prevent, mitigate and eventually eradicate torture in Mexico requires eradicating illegal violence in basic acts of criminal investigation. Torture or ill-treatment during moments of detention, transfer and stay at the Public Prosecutor Office are widespread in Mexico and occur in an environment of violations of legal and operational procedures.

The report by Juan Méndez, Special Rapporteur on Torture of the United Nations High Commissioner for Human Rights, underlined the generalization of torture during his mission *in loco* in 2015, based on 14 cases he had the opportunity to explore. One of the main contributions of the World Justice Project report is that it can deepen the approach of the Special Rapporteur, with the analysis of a sample that corresponds to the cases of 51,658 persons deprived of liberty, who were arrested in the period 2006-2016, interviewed through a statistical instrument of INEGI, whose methodological validity has been proven.

In an environment of institutional violence, as the data on the prevalence of torture or ill-treatment in ENPOL show, far from maintaining the independence of each investigation act, often what the authority does is to contaminate the other evidence. Independence among evidence is replaced by unhealthy dependence between them. The real mark of an effective and reliable criminal investigation is the independence between the evidence provided and the use of methods validated by science to obtain each piece of evidence.

The ENPOL data show a close relationship between the absence of due process and the prevalence of torture or ill-treatment. The lack of adherence to due process that defines the most used investigation acts in Mexico, allows not only illegal violence, but also the contamination and corruption of evidence. What happens in Mexico is not simply that the legally established due process is violated, but what is legally established is itself weak.

Legislative change

The layer of regulations and organizational structure that regulates the most used investigation acts is too thin. The rules governing criminal investigation are brief, dispersed and ambiguous to guide police behavior. Sometimes these regulations are focused on irrelevant matters for the effective protection of civil rights and due process.

The phenomena of torture or ill-treatment could be prevented from early stages. Throughout this report it has been documented that illegal detentions, long transfers or to unknown places, the lack of access to an adequate defense immediately, statements that are rendered without the presence of an attorney are among the factors that favor the prevalence of torture or ill-treatment. But these are not the only components that need to be set out in Mexican law, nor the only ones that INEGI should measure. And it is not simply through regulations that prohibit or obstruct torture that the most fruitful change can be achieved.

In order to achieve a deeper change, it is necessary to conceive police as professionals and as recipients of laws. Imagine that you were an airplane pilot, and the manual to fly the device the only manual is titled "manual to prevent this device from crashing." Who could learn to fly with a constant prospect of failure? So absurd is that one of the main rules governing the interview of witnesses and defendants is entitled *Law to prevent and punish torture*. Just as pilots need a manual to fly the plane, our police need a manual to obtain evidence reliably and not simply a law that presupposes an illicit way of acting. Mexican secondary laws are silent as to how a police officer should search a person; how they should question (not interrogate) a witness and a victim; how they should question a detainee or how specifically to detain a person. Likewise, better professional training in the field of investigation acts for Mexican police is necessary.

Instead of prohibiting the statements of detainees, or confessions, it is smarter to regulate more acutely how they are to be obtained. In Mexico there is a sufficient normative base, but with laws of little scope for the operability in the investigation acts. The police, who are the main recipients of these laws, do not conceive themselves as full procedural actors.

It is necessary to reformulate the legislation with greater specificity. It is not enough for the law to indicate that the identification lineups must be sequential, the form of the spaces where these accusations are made must be clearly explained, that it is a procedure of this nature to avoid the possibility that the eyewitness is wrong, as in a multiple choice exam, otherwise it is not known whether the witness can in fact identify the perpetrator of a crime. Also, explain that the procedure can be audited by a defense attorney. The procedure must also be registered so that a judge can see it later. That is, the necessary infrastructure must be developed for these lineups to be made, or the police must conduct interviews that can then be verified. In no way are the existing safeguards and infrastructure sufficient to regulate and control these investigation processes as they are designed today.

Considering the regulatory deficit that has been evidenced throughout the report, what would be the characteristics of an adequate regulation of the investigation acts? First, it should be a law with national coverage, not just a protocol. The Systematic Operating Procedures are in force for municipal, state and federal police. However, its compliance depends on the hierarchical discipline of each police institution and its proper functioning depends on the training to which the police have access and the powers of the internal control bodies.

Rules should be aimed at regulating the function, not an institution. The law must precisely regulate each investigation act, regardless of who performs it. It should also be regulated with a police recipient known in mind so that it can later be easily translated into operational manuals.

Although the elements of these investigation acts can be dissected conceptually, in practice, all investigation acts may be occurring at the same time. For example, a person may be identified by a witness at the same time as being arrested or he/she may be interviewed at the same time as searched.

Specific legislative recommendations to develop minimum standards of due process per act of investigation

Arrest/Detention

- Properly motivate the arrest in accordance with its grounds (arrest warrant, flagrancy and explain the limits of flagrancy in the new criminal procedure system, reasonable suspicion).
- Clear, precise and strict regulation of the use of force during arrest or detention.
- Registration of detention through the Homologated Police Report and the relevant police accountability mechanisms.
- Model of care for victims, with specificity for people in situations of greater vulnerability: unaccompanied minors, women victims of abuse

Search

- Motivate the search based on legal grounds
- Search for the person's consent, without resorting to coercion.
- Explain to the person what is being sought.
- Specificities and standards to record the search: statement, Homologated Police Report, video (if there is a lapel camera).
- Obligation of the officer in charge of the search to fully identify himself.

Vehicle Search

- Motivate the search based on legal grounds.
- Seek the person's consent, if required.
- Search registration procedure.
- Obligation of the officer in charge of the search to fully identify himself.

Interview

- Explanation or warning of the right to remain silent or make it clear that it is voluntary to participate.
- Explanation of the purpose of the interview and that it can generate evidence.
- Explanation that the information omitted or delivered may be interpreted adversely (guarantee against self-incrimination).
- Obligations to record the interview (minutes, video) and specify who has access to this very personal information, in what period; what temporary coverage the video record has; specifications on photographic angles.
- Access to a defense lawyer.
- Types of questions (open).

Identification lineup

- Clarify in the law that the identification lineup creates the possibility of error. That is, the witness has options to point someone out and he/she can be wrong.
- The structure of the lineup contains the person under investigation and several distractors who the authority knows are innocent. Specifically, several possibly guilty persons should not be put in the lineup.
- The law must stipulate the presentation of the suspect and the distractors.
- The obligation to give instructions to the witness must also be legislated in the sense that there are innocent people in the lineup and that the responsible person may not be there.
- The lineup is recorded in real time with video. If there is an identification or not, a record is prepared. If identification is not made, it is considered exculpatory evidence. If the witness or victim identifies someone, the level of reliability or certainty that the witness has in identifying the person must be recorded.
- Presence of a defense lawyer to ensure that the lineup is fair. Creation of the lineup by a trained person, for example, a social psychologist.
- The lineup administrator must not know who the person under investigation is.

Recommendations on investigation acts carried out by the police

The investigation tasks carried out by the police, specified in Article 132 of the National Code of Criminal Procedures, are not just programmatic goals or secondary mechanisms. It is a central function of police activity as the operator and heart of the criminal procedure system. To do this, it is necessary for the police to organize their training, operational and strategic activities in matters of investigation acts based on the seven stages of criminal policy planning:

- Problem analysis. Document the need for a change in the police function from the investigation acts.
- Setting goals and objectives. Seek co-construction of goals and objectives of the investigation acts between operational police officers and managers.
- Design of policies and programs. It is necessary to establish internal training and operation policies, with specific divisions of responsibilities throughout the chain of command.
- Action planning. Establish a staggered training and instrumentation program.
- Operational instrumentation. Based on information and evidence, an implementation strategy is established in the police institution.
- Evaluation of the results. Based on the Homologated Police Reports and internal performance indicators, it is necessary to evaluate how police officers perform investigation acts.
- Review. With the evaluation data, the processes are reviewed and there is a new start.

Recommendations to police institutions

- Improve internal and external controls. Although every Mexican police institution has different bodies of internal affairs or controls and external controls (human rights commissions, municipal councils, state and federal legislatures, civil society) it is essential to emphasize the importance of supervision to prevent and mitigate torture or ill-treatment. Likewise, clear and effective procedures must be generated to resolve the issues of functional deviation in the police.
- Fight corruption. If police corruption is understood as a functional deviation, any act of torture or ill-treatment is corrupt, because it diverts the function of protecting and serving of the police. This report presents evidence on the higher prevalence of torture or ill-treatment in corrupt environments.

- Transform police training. In addition to the focus on competencies, it is necessary to conduct theoretical-practical courses on investigation acts that allow the cadet to dimension the challenges on the street. Likewise, it is necessary to develop training programs for police commanders on the prevention and eradication of torture.
- Improve the working conditions of the police. Long hours and poor working and living conditions lead to corrupt environments.
- Analyze the correlation of the incidence of torture or ill-treatment in the operation of the police chain of command. Especially to review the role of police commanders regarding the use of torture in police investigation processes, this is particularly relevant in vertical institutions that operate under a strict hierarchy.

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APPENDIX I

HOW IS TORTURE OR ILL-TREATMENT MEASURED IN THIS REPORT?

Torture and cruel, inhuman or degrading treatment or punishment (hereinafter ill-treatment) are different phenomena, but in practice indistinguishable. The main consequence of this is that the present analysis will refer to both phenomena together. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in general comment No. 2 established that the obligations to prevent torture or other cruel, inhuman or degrading treatment or punishment (hereinafter, ill-treatment) are indivisible, interdependent and interrelated and notes that:

The obligation to prevent abuse coincides in practice with the obligation to prevent torture and frames it largely [...] In practice, the conceptual boundary between abuse and torture is not usually clear. Experience shows that the conditions that give rise to abuse often facilitate torture and, therefore, the necessary measures to prevent torture must be applied to prevent abuse. Therefore, the Committee considers that the prohibition of abuse is also absolute in the Convention, and that its prevention must be effective and imperative. (Emphasis added)

As noted, torture and ill-treatment are two interrelated phenomena. According to the Inter-American Court of Human Rights, the essential criterion for distinguishing torture from ill-treatment is the intensity of suffering. Since each human being has a different pain threshold, the intensity of suffering is relative, therefore, distinguishing between torture and ill-treatment, can only be done in a case-by-case analysis.

As in other countries, torture and ill-treatment are prohibited in the Mexican Constitution and in several laws. Mexico has signed international treaties to prevent, investigate, punish and remedy torture and ill-treatment, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the UN, the Inter-American Convention to prevent and punish Torture and the Optional Protocol to the UN Convention against Torture.

In accordance with Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) torture is considered to be any act that causes a person severe pain or suffering (physical or psychological) in order to obtain information or a confession, to punish him/her, to intimidate him/her or to coerce him/her, or for any reason based on some type of discrimination, when said pains or sufferings are inflicted, provoked or permitted by a person in the exercise of public functions.

According to the General Law to Prevent, Investigate and Punish Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, torture may be committed by public or private servants. Article 24 of the law states that:

the crime of torture is being committed by the Public Servant that, in order to obtain information or a confession, for the purpose of criminal investigation, as an intimidation,

as a personal punishment, as a means of coercion, as a preventive measure, or for reasons based on discrimination, or for any other purpose:

- i) Cause physical or psychological pain or suffering to a person*
- ii) Commits a behavior that is tending or capable of diminishing or nullifying the victim's personality or physical or psychological capacity, even if it does not cause pain or suffering, or*
- iii) perform medical or scientific procedures on a person without his/her consent or without the consent of who could legally grant it.*

Article 25 of the same law states that:

The crime of torture is being committed by the individual that:

- i) with the authorization, support or acquiescence of a Public Servant commits any of the behaviors described in the previous article, or*
- ii) with any degree of authorship or participation, intervene in the commission of any of the behaviors described in the previous article.*

However, the same law provides that only public servants can commit cruel, inhuman or degrading treatment or punishment, as can be read in Article 29. The legislation establishes that these types of ill-treatment occur when a public servant in the exercise of his or her assignment mistreats, degrades, insults or humiliates a person as a means of intimidation, as punishment or on grounds of discrimination.

The foregoing demonstrates that while torture or ill-treatment are acts whose difference has been attempted to be established, their close relationship makes conceptual separation complicated. As mentioned earlier, the analysis will include both phenomena together.

From the analysis of ENPOL, it is possible to classify behaviors and events in order to distinguish those cases that are torture or ill-treatment. This classification does not constitute a legal or normative analysis on the criminal types of torture and ill-treatment; on the contrary, it seeks to approach these phenomena from recognizing the experiences of people deprived of liberty and the selection of violent behaviors whose illegality can be presumed with a high degree of certainty.

The starting point to classify what we consider torture or ill-treatment is to understand that every public force that violates human rights is illegal. The legitimate use of public force to enforce the law is permitted; however, this force:

[...] must be both necessary and proportional with respect to the situation in which it is used, that is, it must be exercised in moderation and in proportion to the legitimate objective pursued, seeking to minimize personal injury and loss of human lives; so that excessive force may infringe the right of not to be subjected to abuse.

Although INEGI asks about the different types of physical and psychological violence suffered by a person who is detained, transferred, or who is in the Public Prosecutor Office or in the Correctional Center, this type of violence does not necessarily constitute torture or ill-treatment. For this reason, a classification was made to distinguish between the application of the use of force and unjustified violence.

Such classification seeks to be consistent with Article 19 of the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment, which states that “Physical or psychological pain or suffering that is solely a consequence of legal measures imposed by competent authority, or those inherent or incidental to them, or those derived from the legitimate use of force, in accordance with the provisions of the applicable national and international legislation will not be considered torture”.

That is, there are cases in which the use of force by the authorities is duly applied; for example, if the person resists arrest, tries to escape, harms crime victims or destroys evidence of crime, the authority could make legitimate use of force, but such force must be proportional to the situation.

Below, the different behaviors and classifications of torture or ill-treatment during the moments of i) arrest or transfer to the Public Prosecutor Office; ii) stay in the Public Prosecutor Office and iii) intra-prison life are explained.

Behaviors that constitute torture or ill-treatment during arrest or transfer to the public ministry

ENPOL contains a series of questions related to physical and psychological violence. Of these behaviors, there are some that in no circumstance or context are justifiable for the authority to perform. The following is a list of behaviors that are not justifiable in any manner whatsoever during the detention or transfer of the Public Prosecutor Office and are therefore considered, for the purposes of this analysis, torture or ill-treatment:

- ✓ Rape the detained person
- ✓ Burn the detained person
- ✓ Weapon injuries: wounds with a knife, razor or other sharp object
- ✓ Crush injury: crushing some part of the detained person’s body with an object
- ✓ Threatening to raise false accusations
- ✓ Threatening to harm the detained person’s family
- ✓ Undress
- ✓ Blindfold or cover the head
- ✓ Harm the detained person’s family
- ✓ Prevent breathing (suffocate, or put head in water)

As noted, the different types of violence listed are not justifiable under any circumstances. However, there is another group of violent behaviors that because they are performed during an arrest, they could be justified, so they are not included in the list of behaviors that we consider torture or ill-treatment. The behaviors that are excluded from the analysis are:

- ✗ Pressure to report someone
- ✗ Tie the person up
- ✗ Incommunicate or isolate the person

Finally, there is a third type of violent behavior that may or may not be justified, depending on the context. For example, if the person resists detention or tries to flee, it might be justifiable for the authority to use any weapon or type of physical force. Below there is a list of behaviors with specific circumstances that constitute torture or ill-treatment:

- ✓ Kicks or punches in cases in which the person is not trying to defend him/herself when he/she is being arrested, nor is he/she trying to escape, and this person also reports that the authority did not apply physical force to submit him/her during the arrest
- ✓ Blows with objects such as sticks, gun handle, rifle butt or any other part of a firearm, clubs, canes, etc. in cases where the person is not trying defend him/herself when he/she is being arrested, nor is he/she trying to escape, and this person also reports that the authority did not use any weapon to subdue him/her as a cane, club, gun handle, rifle butt, etc. during the arrest
- ✓ Electric shocks in cases where the person is not trying to defend him/herself when he/she is being arrested, nor he/she is trying to escape, and this person also reports that the authority used a non-lethal weapon to subdue him/her, such as an electric gun, high-voltage electric immobilizer during the arrest
- ✓ Firearm injuries: gunshot wounds in cases where the person is not trying to defend him/herself when he/she is being arrested, nor he/she is trying to escape, and this person also reports that the authority did not shoot him/her with a firearm, such as a gun or rifle during his/her arrest

As it can be seen, the analysis considers only the people who at the time of the arrest did not try to flee or escape, and yet report having been treated with violence. In addition, in all these cases, it is presumed that torture or ill-treatment occurred at some time after arrest, which excludes the assumption of the legitimate use of force during detention.

Behaviors that constitute torture or ill-treatment during the stay in the Public Prosecutor Office

During the stay in the Public Prosecutor Office, the detained person is in the custody of the authority, so it is not justifiable to apply any type of violence. The following behaviors are not justified, so we believe they constitute torture or ill-treatment:

- ✓ Threatening to raise false accusations
- ✓ Threatening to harm the detained person's family
- ✓ Undress
- ✓ Blindfold or cover the head
- ✓ Harm the detained person's family
- ✓ Prevent breathing (suffocate, or put head in water)
- ✓ Unwanted sexual activity
- ✓ Burns
- ✓ Weapon injuries: wounds with a knife, razor or other sharp object
- ✓ Crush injuries: crushing some part of the detained person's body with an object
- ✓ Kicks or punches
- ✓ Hitting with objects such as sticks, gun handle, rifle butt or any other part of a firearm, clubs, canes, etc.
- ✓ Electric shocks
- ✓ Firearm injuries: gunshot wounds

During the stay in the Public Prosecutor Office, we only exclude the following behaviors of being considered torture or ill-treatment:

- ✗ Pressure to report someone
- ✗ Tie the person up
- ✗ Incommunicate or isolate the person

Behaviors that constitute torture or ill-treatment during the stay in the penitentiary center

Another time when people can be tortured or ill-treated is during their stay in the prison. However, this analysis presents some methodological complications since ENPOL only allows a measurement of an unlimited number of torture or ill-treatment practices that occurred in 2016.

Therefore, the report regarding torture or ill-treatment in prison will only refer to the year 2016 and does not cover all torture or ill-treatment practices that may exist; that is, it is likely that in this case there is a sub-report of the phenomenon.

Behaviors that are considered torture or ill-treatment during the stay in prison are the following:

- ✓ Threats to demand money or goods (executed by guards, prison technical staff or medical personnel)
- ✓ Threats to do something or stop doing it (executed by guards, prison technical staff or medical staff)
- ✓ Solitary confinement in dark cell or always illuminated cell
- ✓ Solitary confinement for more than 15 days
- ✓ Kicks or punches (derived from conflicts or clashes with guards)
- ✓ Strikes with blunt objects such as sticks, rods, tools (derived from conflicts or clashes with guards)
- ✓ Wounds with knife, razor or any sharp object (derived from conflicts or clashes with guards)
- ✓ Firearm injuries (derived from conflicts or clashes with guards)
- ✓ Physical injuries such as bruises, fractures, cuts, etc. (executed by guards, prison technical staff or medical staff)
- ✓ Sexual harassment, fondling, indecent exposure or attempted rape (executed by guards, prison technical staff or medical staff)
- ✓ Unwanted sexual activity (executed by guards, prison technical staff or medical staff)
- ✓ Punishments with blows or other physical aggressions

Below is a table that summarizes what we consider as torture or ill-treatment at each of the moments described above:

PSYCHOLOGICAL TORTURE OR ILL-TREATMENT

ARREST OR TRANSFER TO PUBLIC PROSECUTOR OFFICE (2006-2016)

- **Threatening to raise false accusations**
- **Threatening to harm the detained person's family**
- **Undress**
- **Blindfold or cover the head**
- **To harm the detained person's family**
- **Prevent breathing** (suffocate, stifle or put head in water)

STAY IN THE PUBLIC PROSECUTOR OFFICE (2006-2016)

- **Threatening to raise false accusations**
- **Threatening to harm the detained person's family**
- **Undress**
- **Blindfold or cover the head**
- **To harm the detained person's family**
- **Prevent breathing** (suffocate, stifle or put head in water)

PENITENTIARY CENTER (2016*)

- **Threats to demand money or goods** (executed by custodians, prison technical staff or medical personnel)
- **Threats to do something or stop doing** (executed by custodians, prison technical staff or medical personnel)
- **Solitary confinement in dark cell or always illuminated cell**
- **Solitary confinement for more than 15 days**

PHYSICAL TORTURE OR ABUSE

- **Unwanted sexual activity**
- **Burns**
- **Weapon injuries:** wounds with a knife, razor or other sharp object
- **Crash injuries:** crushing some part of the detained person's body with an object
- **Kicks or punching*** (only when the person reports that the authority did not apply physical force to submit him during the arrest)
- **Hitting with objects:** such as sticks, gun handle, rifle butt or any other part of a firearm, clubs, canes, etc.* (only when the person reports that the authority did not use any blunt weapon to submit him such as sticks, gun handle, rifle butt or any other part of a firearm, clubs, canes, etc.)
- **Electric shocks*** (only when the person reports that the authority used some non-lethal weapon to submit it as an electric gun, high voltage electric immobilizer during the arrest)
- **Firearm injuries:** gunshot wounds* (only when the person reports that the authority did not shoot him with firearms such as a gun or rifle during the arrest)arresto)

- **Unwanted sexual activity**
- **Burns**
- **Weapon injuries:** wounds with a knife, razor or other sharp object
- **Crush injuries:** crushing some part of the detained person's body with an object
- **Kicks or punching**
- **Hitting with objects:** such as sticks, gun handle, rifle butt or any other part of a firearm, clubs, canes, etc.
- **Electric shocks**
- **Firearm injuries:** gunshot wounds

- **Kicks or punching** (derived from conflicts or clashes with custodians)
- **Strikes with blunt objects such as sticks, rods, tools** (derived from conflicts or clashes with custodians)
- **Wounds with knife, razor or any sharp object** (derived from conflicts or clashes with custodians)
- **Firearm injuries** (derived from conflicts or clashes with custodians)
- **Physical injuries such as bruises, fractures, cuts, etc.** (executed by custodians, prison technical staff or medical personnel)
- **Sexual harassment, fondling, indecent exposure or attempted rape** (executed by custodians, prison technical staff or medical personnel)
- **Unwanted sexual activity** (executed by custodians, prison technical staff or medical personnel)
- **Punishments with blows or other physical aggressions**

*Only cases in which the person did not try to defend themselves when they arrested or tried to escape to avoid the arrest are considered.

**The ENPOL only allows a measurement of an unlimited number of torture or abuse practices that occurred in 2016.

APPENDIX II

THE CHALLENGES FOR TORTURE METRICS

A future measurement should disaggregate the evidence categories (especially the most frequent ones), so that we can know from which investigation act the evidence is the result. For example, a witness can point out a person in an identification lineup, or give his or her name in an interview. An object can be obtained in a search that does not require judicial authorization. Or in a search in a private space, which, like the intervention of private communications, does require it. These data are not yet observable in ENPOL. Nor are searches or witness statements that occur at the time of detention observable because the survey did not ask about it.

TOPICS MEASURED BY INEGI

DETENTION

- What justifies the detention
- If the authority was identified "as authority" when detaining the person and explained why the person is being detained
- Transfer time after detention
- Use of force during detention
- Torture during detention or transfer
- Where the person was led after the detention
- Duration of transfer detention, in public prosecutor custody, preventive detention

TOPICS NOT MEASURED BY INEGI

- The reason they gave him/her to detain him/her seems satisfactory
- What time they detained him/her
- If the detention was motivated by an inspection
- If the detained person was told who specifically detained him/her
- If the person was given verbal directions "don't move, etc." as part of the use of force
- How the detention was recorded (for example by using video from lapel cameras) and if it was uploaded on a tracking platform
- If he/she or his/her lawyer had access to the detention record
- If that record was used as evidence
- If women participated as an authority in his/her detention

WITNESSES

- If the authority put pressure on him/her to be an accusing witness of another person
- If a witness was used to accuse him/her
- If that witness was in prison

- Do you know if the person (people) who accused or pointed him/her out was (were) tortured to point him/her out? Is that person in prison?
- If that interview where the person was pressured (or not) to be a witness was recorded
- How it was registered (with video, a document, etc.)
- If it was decided to point someone out due to pressure
- Who and how did he/she point out? In a lineup?
- If his/her pointing out was offered as evidence and he/she participated in a trial hearing or only in an initial hearing
- That is, pressure or not, was he/she sought as an accusing witness of another person?

LINEUPS

- How was he/she identified by another witness. In other words, in identification lineups where he/she was presented only, among other people who act as distractors for the witness and if they are presented simultaneously or sequentially

- If the lineup really created the possibility that the witness was wrong
- If the lineup was recorded with video or not
- If the lineup administrator knows who the target suspect is
- If the person was allowed to have a lawyer present in the lineup
- If the witness identified him/her or not
- If it was used as evidence in a trial or was used only to bind he/she over for initial proceeding without this being discussed at trial
- How does he/she evaluate the lineup, was it fair or was it a simulation?
- How does he/she evaluate the lawyer's performance in the lineup

INTERVIEW

- If the lawyer was present during the interview
- If there was torture during the stay at the public prosecutor's office
- If the person decided to testify
- If the person confessed
- If the authority wrote down exactly what he/she said
- There are questions about "the stay in the public prosecutor's office" but insufficient about the act itself of being interviewed or interrogated

- If they specifically identified themselves in the interview (I am this person, etc.)
- If it was explained to him/her that he/she was a volunteer to declare
- If he/she really felt it was optional to participate
- If there was torture in the interview itself
- If the interview was videotaped or how it was recorded
- If the record was complete, accurate, reliable, of everything that happened in the interview
- If subsequently there was access to that record
- How long was the interview?
- What time they interviewed him/her
- What type of questions were asked accusatory or open?
- If the interrogation was unfair, stressful or confrontational
- If the person was made promises of a light sentence or he was exhibited false evidence
- How does he/she evaluate the lawyer, if he/she had one, during the interview
- How does he/she evaluate the interview, if it was fair and if they really wanted to know his/her version or just accuse him/her?
- How many times was he/she interviewed?

Although torture is a normative construction that has been the subject of broad international instruments and domestic laws, explaining and clarifying what torture is an intellectually complex operation. This complexity stems not only from the multiplicity and dispersion of national and international norms that draw the contours of the phenomenon of torture, but also that many of these norms refer to the individual experience of pain or suffering.

For example, the United Nations Convention on Torture states that "the term" torture "shall be understood as any act by which a person is intentionally inflicted upon *severe pain or suffering*, whether physical or mental." For example, Mexican law to prevent and punish torture says that "physical or psychological pain or suffering that is solely a consequence of legal measures imposed by a competent authority shall not be considered torture"; it also says that the crime of torture

is committed by a public servant that, for any purpose “causes pain or physical or psychological suffering to a person;” or that “commits a behavior that is tending or capable of diminishing or nullifying the victim’s personality even if do not cause pain or suffering.”

These references to individual experience create a situation in which that pain and suffering are evidence. For the purposes of a quantitative characterization of what torture is, these normative hypotheses force us to ask what pain and suffering are and what causes them. But the problem is that the experiences of pain and suffering are subjective: what causes some people pain or suffering, may not cause it to others.

Fortunately in the academic literature, efforts have been made to quantify the experience of pain and suffering in a standardized way. A concept known as “post-traumatic stress” (hereinafter PTSD) has been created, which can be used to understand the consequences of torture. It should be noted, at this point, that INEGI, through ENPOL, only measures prevalence of torture or ill-treatment.

Indubitably, suffering from electroshocks, rapes, asphyxiation, are events that cause stress. For this same reason, it is essential to quantify that stress. However, INEGI does not ask respondents what the effect of these abuses was. For the purpose of explaining this point, reference is made here to an academic effort to quantify stress and its relation to the acts that cause it. One of the authors who have gained more knowledge in this regard is Metin Basoglu (2010: 137) who uses quantitative methods to explain that torture and ill-treatment can, interchangeably, have the effect of PTSD.

Basoglu quantifies and measures the intensity of distress. He experimented with a sample of 400 victims of torture, who were asked to evaluate or assign a code from 1 to 4 the level caused by various stress events. He then carried out several analyzes where he explores the level of association between types of torture or ill-treatment and averages of scores of all events to predict PTSD in victims. Subsequently, he made a principal component analysis of the 46 stress events he takes into account. Principal component analysis is used to condense variables.

In the Basoglu study, 12 main components that explained 56 percent of the variance of the 46 items of torture and ill-treatment were obtained. Of those 12 components, Basoglu decides to keep the 3 that summarize more variation and have a formal interpretation: events of ill-treatment, physical torture and sexual torture. Subsequently, Basoglu made a multivariate analysis with these components to predict PTSD in victims of torture, where he used as predictors the characteristics of the victims and their distress scores, and another with the predicted scores of each component on the PTSD. In general, he uses the analysis of main components to generate three variables: distress caused by ill-treatment, distress caused by physical torture, and distress caused by sexual torture, from the 46 distress variables of individual events. One of Basoglu’s great conclusions is that torture or ill-treatment together or separately can cause PTSD. In that sense, the distinction loses relevance. What is fundamental is the consequences of this illegal violence for victims.

The description of this analysis operation can be complex, but the objective is to emphasize that ENPOL asks about events that can presumably generate stress. But it does not generate data to make

an analysis like Basoglu does, because ENPOL does not ask about the intensity of the events of illegal violence. That is, it is documented that there is a prevalence of kicks, electric shocks and other illicit actions. However, a measurement of the stress levels caused by these events is not presented. In a future analysis, it is desirable for INEGI to measure stress levels with an instrument already validated internationally.

The consideration for wanting to measure PTSD is dual. On the one hand, the prevalence of tortured or ill-treated prisoners in ministerial or police custody has been observed. However, it is necessary to know what effects these abuses had. This can be used to obtain a further validation factor of what people deprived of liberty say. If there is torture, posttraumatic stress should be observed, even in an abbreviated measurement of this. If there is no torture, a posttraumatic stress scale would not find PTSD.

But, beyond validating ENPOL's measurement of torture, the question of what to do to help torture survivors overcome the trauma they live with is transcendent. A measurement of PTSD can give an approach about the total amount of trauma. From this, various authorities can propose a treatment plan for all those with trauma. It is important to note that there are very low cost and high efficacy therapies, such as the so-called Eye Movement Desensitization and Reprocessing (EMDR). It is a treatment that relieves the consequences of torture. In Mexico today this seems to be very far from the help available, but given the magnitude of victimization observed, considering treatment alternatives can help break cycles of violence.

A relevant reason for measuring PTSD is that posttraumatic stress disorder makes a person more susceptible to violent reactions inside the prison, as well as contributing to criminogenic behavior factors.

In conclusion, both because (a) it would help to validate the report of the inmates on the events of torture and to have more conclusive information on the prevalence of torture and ill-treatment observed (b) by measuring the demand for treatment to relieve stress and assign effective therapies, it would help formulate public policies (c) it would help identify and prevent criminogenic factors in the eventually treated population. Therefore, we believe that a brief measurement of PTSD should have a place in a future version of ENPOL.

In the Netherlands there is an extremely successful forensic treatment, mandated through the "Trust Law" for a group of people sentenced for crimes. Treating people for trauma can successfully reduce recidivism. According to ENPOL, today 25 percent of people deprived of their liberty were previously in prison, which suggests very high levels of recidivism.

A group of four Mexican psychiatrists adapted an international instrument to measure PTSD to Mexico's conditions, originally designed by Weather, Litz, Keane, Palmieri, Marx and Schnurr. In the "Checklist of Post-traumatic Stress Disorder for DSM-5 (Durón, et al., 2019: 28), they generated 20 qualified reagents with a Lickert scale to assess the conditions of this disorder. It is advisable that these reagents be considered in the questionnaire of future surveys of ENPOL.

APPENDIX III

RELIABILITY OF ENPOL DATA

In the case of the data from ENPOL 2016, one of the main objections to the results of perception surveys is the risk of false answers, because the respondents are persons deprived of liberty. However, aspects such as the design of the ENPOL 2016 questionnaire, the conditions for its survey and the robustness of the sample constitute an important support for the information obtained.

In this regard, the first element of reliability in the responses of ENPOL is the anonymous application of questionnaires made to persons deprived of liberty. Each respondent receives a detailed explanation that the information he/she will provide does not affect the legal process he/she faces in any manner whatsoever. In addition, each respondent may perceive that his/her name is not registered and that, therefore, there is no possibility of linking his/her response to the particular judicial process.

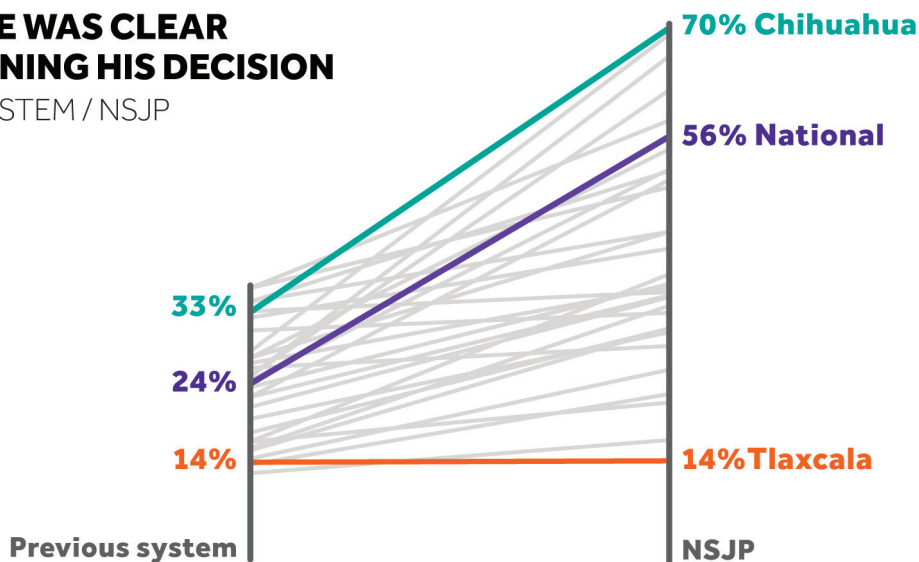
A second reason to rely on the survey responses has to do with the internal structure of the data obtained and the absence of strategic responses. To verify the above, the answers provided by the persons deprived of liberty are shown in graph A3.1 regarding whether the court decisions are clearer under the New Criminal Justice System.

That particular question is interesting because the respondents are those who lost their trial and are now evaluating the clarity of the decision; however, the answers indicate that under the New Justice System, persons deprived of their liberty evaluate the judges who deprived them of their liberty more positively.

GRAPH A3.1

THE JUDGE WAS CLEAR BY EXPLAINING HIS DECISION

PREVIOUS SYSTEM / NSJP



Percentage of persons deprived of liberty who declared receiving a very clear / clear explanation about the judge's decision.
Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

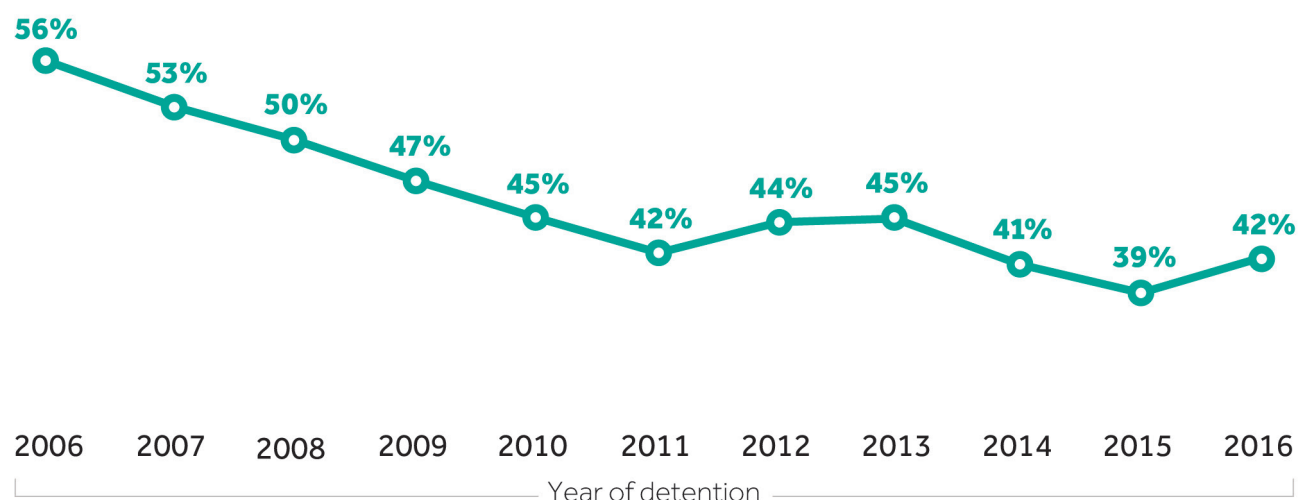
In this case, a strategic response from the persons deprived of liberty is not observed, since they positively qualify the clarity of the sentence that convicted them. In the same way that people deprived of liberty can positively evaluate their own decision, they can also evaluate it negatively and can provide information regarding their experiences during the arrest, transfer and stay in the Public Prosecutor Office.

Also, an additional analysis was carried out on the recognition of criminal responsibility carried out by the respondents, an aspect in which a strategic response could be expected. The result is that nationally, persons deprived of liberty accept their guilt at a maximum of 57 percent and a minimum of 47 percent between 2006 and 2016. Below, Figure A3.2 is shown with the percentage of people that recognize their guilt.

GRAPH A3.2

MÉXICO 2006-2016: TORTURE OR ILL-TREATMENT REPORTED WHILE UNDER ARREST, TRANSFER OR IN PUBLIC PROSECUTOR CUSTODY

PERCENTAGE OF PERSONS DEPRIVED OF LIBERTY WHO ACKNOWLEDGE THEIR GUILT



Universe: 287,784 persons deprived of liberty who were arrested during the period 2006-2016.

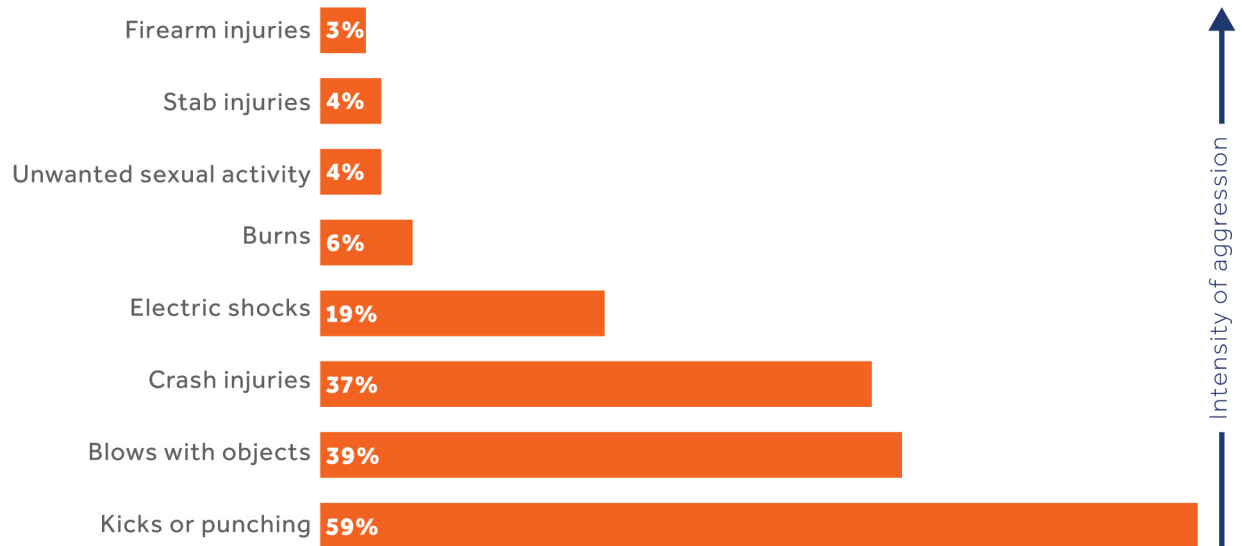
Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

The above is an additional way of showing that there is no statistical reason to consider that surveys of persons deprived of liberty have low reliability. Additionally, studies such as “Quality of Prisoner Self-Reports. Arrest and Conviction Response Errors”(Marquis, 1981, SCJN; 2014) have shown that people deprived of liberty do not deny, on average, arrests and convictions; that is, their answers are reliable.

Additionally, in relation to the physical violence experienced by people deprived of liberty, coherent responses are observed since it is expected that the physical violence of greater intensity will be applied in a smaller number of cases compared to acts of less intense physical violence. Graph A3.3 shows how the responses of people deprived of liberty reported precisely that less intense violence is the most frequent, while more intense violence occurs on fewer occasions.

GRAPH A3.3

MEXICO 2006-2016: PERCENTAGE OF PEOPLE WHO DECLARED TO HAVE RECEIVED PHYSICAL AGGRESSIONS DURING THEIR STAY IN THE PUBLIC PROSECUTOR OFFICE



Universe: 184,037 persons deprived of liberty who were taken to the Public Prosecutor Office during the period 2006-2016.

Source: Produced by WJP using data from INEGI, 2016 National Survey to Persons Deprived of Liberty.

A third reason to rely on the answers provided in the ENPOL is related to the informative value provided by the responses of persons deprived of liberty, since they are the direct users of the criminal justice system. They are the only people who are users of the criminal system in all its stages, since they were arrested, taken to the Public Prosecutor Office, faced a trial and are in a prison. Then, it is precisely theirs, it is from whom the most complete information can be obtained.

Finally, a fourth reason to rely on the results of ENPOL has to do with the international recognition that the survey has had. The Committee against Torture examined the seventh periodic report of Mexico in 2019 and not only mentions that the results obtained in ENPOL are serious in terms of torture and ill-treatment, but recommends “guaranteeing the periodic realization of ENPOL and the publication of its results.” At the Paris Peace Forum this ENPOL survey was awarded and selected as a project to formulate public policies on torture in Mexico and in the world. Likewise, the UNODC-INEGI Center of Excellence has actively participated in the elaboration of the questionnaire, the piloting, the validation of the instrument and its technical structure.

All of this as a whole indicates that the data used is credible and that it is possible to rely on them to evaluate the Criminal Justice System and, with it, the prevalence of torture or ill-treatment in the criminal context.

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