

Forced Confessions: Tracking Torture and Mistreatment in Mexico's Accusatorial Criminal Justice System

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TABLE OF CONTENTS

ABSTRACT	4
1. INTRODUCTION	5
2. TORTURE AND REFORM IN MEXICO	6
2.1 A Human Rights Crisis	6
2.2 The Historic Spectrum of Torture in Mexico	8
2.3 Mexico's "Mixed Inquisitorial" System: The Roots of Abuse	9
2.4 The Reform: A Step toward Judicial Accountability	10
2.5 Reducing Torture: Institutions and Incentives	12
2.6 Evaluating the Reform: Achievements and Challenges	14
2.7 A "Disturbing Imbalance": Criminal Detention under the SJPA	15
3. RESEARCH QUESTION AND METHODOLOGY	16
3.1 Defining Torture and Cruel, Inhuman, or Degrading Treatment	17
3.2 National Commission of Human Rights Alert System	18
3.3 National Survey of the Population Deprived of Liberty (ENPOL)	20
4. RESULTS	23
4.1 National Commission of Human Rights (CNDH) Alert System	23
4.2 National Survey of the Population Deprived of Liberty (ENPOL)	26
5. DISCUSSION OF FINDINGS	31
5.1 The Drug War: Data Implications	32
5.2 Measuring Reform Implementation across States	33
5.3 Constraining Judicial Behavior: Gradual Improvements	34
5.4 The Limits of Official Data in Mexico	35
6. POLICY RECOMMENDATIONS	36
6.1 Improving Official Data Sources	36
6.2 Explicitly Condemning Torture	38
6.1 Strengthening the Rights of the Detained	39
6.2 Countering the Counter-Reform	40
7. CONCLUSION	41
9. BIBLIOGRAPHY	ERROR! BOOKMARK NOT DEFINED.
APPENDIX A: LIST OF ACRONYMS	50
APPENDIX B: LIST OF FIGURES	51

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"There's not a day when I don't recall how they beat me up, threatened me and forced me to admit to things I didn't do. It's a daily torture. It's like being buried alive."

-Account of Damián Gallardo Martínez, tortured by Mexican federal police in May 2013
(Amnesty International, 2015)

"When, more than 30 hours after their arrest, [Korina and Denise] were finally taken to a public prosecutor[...], Korina was pressured into signing a "confession" admitting to involvement in organized crime and drug offences. Denise was accused of the same crimes. When Korina told a Navy doctor what the marines had done to her, [...] he said: 'shut the fuck up, don't say bullshit.' Both women reported the torture they suffered in front of a judge, but their allegations were later ignored by an appeals judge."

-Account of Denise Blanco and Korina Utrera, couple tortured and raped by Mexican Marines in 2011
(Amnesty International, 2016)

Abstract

This study examines the impact of Mexico's 2008 criminal justice reform on the practice of utilizing torture and mistreatment to extract criminal confessions. Complaint data submitted to the National Commission on Human Rights (*Comisión Nacional de Derechos Humanos*, CNDH) and detainee survey data compiled by the National Institute for Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, INEGI) were employed to assess if the use of torture and mistreatment by judicial sector operators had decreased (1) in states with advanced levels of reform implementation and (2) in judicial districts that had already implemented the reform. The author also examined the incidence of forced confessions before and after the reform's implementation at the judicial district level.

The author hypothesized that decreases in torture, mistreatment, and forced confessions would be observed in each of these cases. Basic correlation and regression tests were employed to assess the geographic hypothesis, while two chi-square tests for independence were utilized for judicial district data. The results of these analyses

Forced Confessions

demonstrate evidence rejecting the null hypothesis in each instance, suggesting that the reform can indeed be credited for small but meaningful reductions in torture, mistreatment, and forced confessions in Mexico. The author argues that reforms must be accompanied by further action to address the pervasive use of torture and mistreatment in Mexico

1. Introduction

This study examines the impact of Mexico's 2008 criminal justice reform on the use of torture and cruel, inhuman, or degrading treatment (herein referred to as "mistreatment") by judicial sector operators as prosecutorial tools. Specifically, it analyzes how the reform has served to reduce the practice of utilizing torture and mistreatment to extract criminal confessions by imposing new constraints and incentive structures to re-shape the behavior of judicial actors. It employs data from two sources in order to determine whether or not the implementation of the Accusatorial Criminal Justice System (SJPA) has resulted in a reduced incidence of torture and mistreatment by judicial sector personnel.

First, this study tests the geographic relationship between reform performance and the incidence of torture and mistreatment on a year by year basis from 2015 to 2018. It employs torture and mistreatment complaint data from the National Commission of Human Rights (*Comisión Nacional de Derechos Humanos*, CNDH) National Alert System, population projections from Mexico's National Population Council (*Consejo Nacional de Población*, CONAPO), and state-level SJPA implementation rankings from México Evalúa in order to conduct these analyses. Next, it utilizes detainee survey data from the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía*, INEGI) to perform two separate chi-square tests for independence in order to detect any significant national differences in the number of reports of (1) torture and mistreatment and (2) the number of forced confessions following municipal-level SJPA implementation. This research also tested for significant differences in torture and forced confessions before and after the reform's implementation at the state level in order to capture the reform's subnational effects.

This investigation hypothesized that a decrease in the incidence of torture and mistreatment would be observed in states with higher levels of SJPA implementation. Furthermore, the research hypothesized that reports of (1) torture and mistreatment and (2) forced confessions would decrease following the municipal-level implementation of the SJPA. Results of these analyses demonstrated evidence rejecting the null hypothesis in the case of torture, suggesting that the SJPA can indeed be credited for small but meaningful reductions in certain types of abuses. The results yielded a marginally significant reduction in forced confessions, suggesting that the reform may have also contributed to a reduction in forced confessions; however, further inquiry is necessary to confirm this finding. Lastly, it was not possible to evaluate the subnational hypothesis using INEGI data due to a

limited number of cases, but state-level chi square tests suggest that the SJA has resulted in significant reductions in torture and forced confessions in Mexico's criminal justice system. While these findings suggest that the SJA represents a significant step toward reductions in human rights abuses by judicial sector officials, these reforms must be accompanied by further action to address the current epidemic of torture and mistreatment in Mexico.

2. Torture and Reform in Mexico

2.1 A Human Rights Crisis

Over the past decade, Mexico has seen a growing number of human rights violations at the hands of state and non-state actors. According to official data from INEGI and the Executive Secretary for the National Public Security System (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*, SESNSP), 233,219 people were murdered in Mexico from 2008 to 2017, and at least 34,444 people went missing, many of whom were presumed dead, during the same period (INEGI, 2019; SESNSP, 2019). These figures have been accompanied by further unquantifiable violations of human rights, as documented by international organizations and civil society groups. In particular, domestic and international human rights advocates have noted the sustained prevalence of torture and mistreatment in Mexico (Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C., 2015; Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, 2019a; United Nations Committee Against Torture, 2019; United Nations General Assembly, 2014).

While substantial reporting by scholars and civil society organizations has underscored the magnitude of the crisis, there is very little publicly available information documenting the prevalence of institutionalized torture as a whole. Mexico's national human rights ombudsman, the CNDH registers complaints of torture and cruel, inhuman, and degrading treatment filed against government bodies, but scholars and nongovernmental organizations have noted the contradictory and inconsistent nature of official data on the practice (Amnesty International, 2015; PRODH, 2015; Finkel, 2012; González-Núñez, 2018). This is the case despite extensive reporting by civil society groups and international organizations documenting the institutionalized use of torture within Mexico.

For example, in 2003, the United Nations Committee Against Torture (UN CAT) released a report illustrating the systematic nature of the practice. The committee examined hundreds of reports of torture in Mexico through direct interviewing and through records of state human rights bodies. As the committee notes, victims of torture reported eerily similar experiences. Most reported that their torturers had forced them to confess to crimes they had not committed, including homicides, kidnappings, robberies, and sexual offenses.

Forced Confessions

Similarly, victims reported nearly identical methods of torture, which included electric shocks, asphyxiation, mock executions, and direct threats of harm to family members (United Nations Committee Against Torture, 2003).

The UN also specifically cites the role of Mexico's public prosecutors in obtaining these forced confessions. While judicial police, or other security officials, are typically responsible for carrying out acts of torture, Mexico's public prosecutors are often complicit in the practice, accepting forced confessions as evidence in their cases. Furthermore, the UN report states that some public prosecutors were allegedly present while the accused was tortured, and in some cases, the prosecutors had sent the accused back to the police to be tortured after they had refused to confess to crimes (United Nations Committee Against Torture, 2003). As of 2004, CNDH data demonstrated that 92% of cases of reported torture were the result of forced confessions obtained from the victims (Hernández Forcada & Lugo Garfias, 2004, pp. 139).

Despite UN reporting, the practice of using torture to extract confessions remained prevalent throughout the following decade, particularly under President Felipe Calderón (2006-2012). After the government began increasing its military operations against organized crime groups (OCGs), the volume of cases involving torture seemed to rapidly increase. Victim testimonies from this time period are strikingly similar; police, public prosecutor's office personnel, or military officials would arrest victims under the pretext that they had committed a crime. Next, the victims were typically taken to military bases, police stations, or clandestine detention centers and tortured until they were forced to confess to involvement in organized crime. These confessions were then used to justify the illegal arrest and detention *a posteriori* (Human Rights Watch, 2011; Magaloni, Magaloni, & Razu, 2018).

From 2005 to 2007, the CNDH released four official recommendations to government organizations based on complaints of torture filed against them. However, from 2008 to 2010, this figure increased to twenty-eight (28) total recommendations. Similarly, the number of complaints of cruel, inhuman, and degrading treatment presented to the CNDH also increased during the same time period. At the start of Calderón's *sexenio*, in 2006, the commission received 330 total complaints. However, by 2010, the annual number of complaints had increased to 1,161 (Human Rights Watch, 2011).

In 2014, the UN conducted a second assessment of the use of torture in Mexico, sending Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Juan E. Méndez to document the practice's incidence within Mexico. Méndez reports that torture continues to be "generalized" throughout Mexico, particularly in the context of a growing security crisis. Similar to the 2003 report, Méndez notes that suspects are often detained for alleged links to organized crime and are tortured using common methods, such as electric shocks, waterboarding, asphyxiation, and sexual

torture. The 2014 UN report also cites Mexico's continued indifference to the use of forced confessions (United Nations General Assembly, 2014).

Nongovernmental human rights organizations have substantiated these reports for years, documenting the cases of torture and forced confessions in detail, albeit with limited access to official data. PRODH first alerted the UN CAT of these abuses in 1998 and has since released dozens of reports documenting human rights violations, including the institutionalized practice of torture and cruel, inhuman, and degrading treatment. The PRODH Center argues that the practice has become a *modus operandi* within Mexico's military and security institutions, particularly within the army; the navy; and police forces at all levels of government. Consistent with UN and Human Rights Watch reporting, PRODH documents government officials detaining and torturing suspects for the purpose of extracting coerced confessions (PRODH, 2015).

2.2 The Historic Spectrum of Torture in Mexico

While the use of torture as a prosecutorial tool has been documented as "generalized" in the context of growing insecurity and human rights abuses, the practice began long before these trends emerged, and for reasons other than coercing confessions. The discovery of torture chambers in the early 1900s suggests that Mexican officials utilized the practice to coerce indigenous peoples into forced labor (Hart, 1997).

Moreover, during the era of Mexico's one-party rule under the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI) from 1929 to 2000, torture was practiced as a means of social control. After Mexico's 1910 revolution, the advent of PRI rule promised social peace and economic prosperity leading into Mexico's "golden age" of the 1940s and 1950s. Nonetheless, the fabric of this PRI-instituted social peace began to show signs of fraying beginning in the 1960s (McCormick, 2017). Protest movements led by farmers, doctors, railroad workers, professors, and students surged throughout the decade, resulting in a brutal crackdown by the PRI-controlled state. During this time period, the government illegally detained, forcibly disappeared, and tortured hundreds, if not thousands, of citizens who were thought to threaten the stability enjoyed during the previous decades (McCormick, 2017; Mendoza García, 2011).

As Rejali (2011) warns, once the use of torture is legitimized by the state, the corrosive practice roots itself in the judicial, intelligence, and military institutions that employ it, often lingering for decades. In this context of relative indifference to the practice's consequences, torture was gradually institutionalized as an investigative tool within Mexico's criminal justice system. As Piccato (2017) notes, police investigators began using torture as a form of "energetic interrogation" starting in the 1920s. Moreover, the nature of the historic practice is strikingly similar to the testimonies of contemporary victims. Officers typically employed the practice prior to the criminal indictment and used similar

Forced Confessions

methods of torture, such as mock executions, electric shocks, and direct threats of harm to family members. As Piccato (2017, p. 117-119) explains, the primary motive for this behavior was consistent with today's practice; if police could obtain a confession of guilt, other forms of investigation became unnecessary, and the officers could successfully close the criminal case. In recent years, public prosecutors have seen an increased volume in criminal cases, resulting in fewer than one in five cases being resolved satisfactorily. This has aggravated the historic pattern observed by Piccato, increasing the pressures for prosecutors to extract relevant information from the accused during the preliminary inquiry stage, often to the detriment of the suspects' human rights (Zepeda Lecuona, 2007).

2.3 Mexico's "Mixed Inquisitorial" System: The Roots of Abuse

In order to understand how torture became a *modus operandi* within Mexico's criminal justice system, it is important to establish the mechanisms that incentivized and sustained the practice. During the post-revolutionary era, Mexico began to depart from more traditional inquisitorial systems of criminal justice, affording new powers to the public prosecutor. These changes were enshrined in the 1908 Organic Law of the Federal Public Prosecutor (*Ley Orgánica del Ministerio Público Federal y Reglamentación de Sus Funciones*), the 1908 and 1917 Organic Law of the Federal Judiciary Branch (*Ley Orgánica del Poder Judicial Federal*), the 1938 Organic Law of the Federal Attorney General (*Ley Orgánica de la Procuraduría General de la República*), and numerous subsequent pieces of legislation passed throughout the twentieth century that gradually enhanced the autonomy of the public prosecutor (Rodríguez Ferreira & Shirk, 2015; Shirk, 2013).

Thus, the practice of torture as a prosecutorial mechanism can be traced to gradual changes within Mexico's criminal justice system. As such, González-Núñez (2018) frames the contemporary practice of torture by Mexican officials in this historic context, reinforced by mechanisms within the country's previous "mixed inquisitorial" criminal judicial system. As a result of "procedural immediacy," or the judicial practice of accepting criminal suspects' initial statements over subsequent ones, Mexico's prosecutors and law enforcement bodies were incentivized to use torture as a means to produce confessions. These coerced statements were often accepted as the sole basis for incrimination, reducing the prosecutor's responsibility to produce objective scientific evidence against the accused (González-Núñez, 2018). Combined with a high degree of autonomy as a result of twentieth century legislation, public prosecutors were able to continue the practice unchecked (Shirk, 2013).

These practices were reinforced by regulations governing criminal detention. Specifically, Article 16 of the 1917 Constitution permits judicial and preventive police to arrest any person caught “in the act” of committing a crime (*en flagrante*). When a suspect is arrested *en flagrante*, they are handed over to the state or federal public prosecutor. However, the definition of *en flagrante* was gradually expanded, and in many cases, arrests were made up to seventy-two (72) hours after the crime was allegedly committed (Uildriks, 2010). This rule allowed police and prosecutors to operate without oversight, increasing the number of criminal suspects in detention. In fact, one study found that arrests *en flagrante* may have at one time accounted for up to 60% of total arrests in Mexico City (Alvarado Mendoza, 2006). Prisoner survey data from 2002 confirms this finding, with 60% of 1,615 randomly sampled prisoners detained in Mexico City, Mexico State, and Morelos reporting having been arrested *en flagrante* (Azaola & Bergman, 2007).

This reliance on detention further reinforced police and prosecutorial confessions using torture and mistreatment. In its 2003 report, the UN CAT found that the incidence of torture was likely highest during the period between detention and committal for trial, when suspects were held at police or public prosecutor’s offices (United Nations Committee Against Torture, 2003). As such, police and prosecutors possessed not only the *incentive* to extract criminal confessions, but Mexico’s criminal justice system also provided them ample *opportunity* to do so in the context of criminal detention. Indeed, in the same 2002 survey of 1,615 inmates in Mexican prisons, half of the prisoners reported confessing to a crime as a result of intimidation or torture (Azaola & Bergman, 2007). Thus, on the whole, Mexico’s former “mixed inquisitorial” criminal justice system possessed numerous institutions and procedural elements that reinforced the existing practice of employing torture and mistreatment to extract confessions.

2.4 The Reform: A Step toward Judicial Accountability

In 2008, the Mexican Congress passed a reform that would seek to reduce prosecutorial influence over the criminal process. This sweeping legislation would transform Mexican criminal procedure from the traditional “mixed inquisitorial” model to an oral adversarial system (Rodriguez Ferreira & Shirk, 2015). The previous system was based in civil law traditions descended from Europe rather than the common law systems of the U.S., British, and Australian judiciaries (Kingman-Brundage, 2016). While common law mostly relies on *stare decisis*, or the accumulation of previous case decisions to enact judgment, the civil law system is deductive in nature; laws are written and then subsequently applied to specific cases to enact judgment (Hannan, 2013).

Nonetheless, Mexico’s “mixed inquisitorial” model differed in several key areas from its ancestral European systems. As mentioned, throughout the twentieth century, Mexico adopted practices that expanded the role of the prosecutor. Consequently, the public prosecutor began overseeing numerous phases of the criminal justice process, including

Forced Confessions

police and detective work during the investigation. The prosecutor also maintained a central role during the accusatory phase, particularly as the defense possessed a limited ability to challenge prosecutorial evidence or arguments during the trial and sentencing. Furthermore, it was not uncommon for the judge to base their final sentence exclusively on evidence presented by the prosecutor, resulting in an increased tendency to find the accused guilty of the alleged crime(s). This tendency was only compounded by the fact that the sentencing judge was often the same judge that initially found sufficient cause to proceed with a criminal investigation against the accused (Rodriguez Ferreira & Shirk, 2015).

The 2008 reform sought to realign many of the aforementioned imbalances in favor of a system that allowed the prosecution and defense to engage in oral, adversarial argument. The reform introduced the Accusatorial Criminal Justice System (*Sistema de Justicia Penal Accusatorio, SJPA*) that would institute oral, adversarial criminal trials; alternative sentencing; and alternative dispute resolution mechanisms (ADRs). The introduction of ADRs was meant to relieve congestion in Mexico's penal system, allowing for increased capacity to appropriately follow procedure. The SJPA would also afford stronger rights to those accused of crimes through the presumption of innocence, proper due process, and adequate legal defense. Lastly, the reform would seek to alter the roles of police and prosecutors under the traditional system (Ingram, Rodriguez Ferreira, & Shirk, 2011; Shirk, 2010; Zepeda Lecuona, 2008).

Specifically, the reform introduced a procedure that would establish probable cause as the basis for criminal indictment. By reducing the threshold of evidence required for a criminal indictment, the reform limited the public prosecutor's previously dominant role over the preliminary administrative phase of the criminal proceeding, or the *averiguación previa*. This diminished the public prosecutor's incentives to produce an immediate criminal confession, as testimonies and declarations to be considered as evidence would have to be presented later in the criminal process before a judge at trial (Shirk, 2010; Zepeda Lecuona, 2008).

Under the new system, the axis of oversight shifted from the public prosecutor to the judge, who became responsible for monitoring the activities of police and public prosecutors throughout all stages of the criminal proceeding (Zepeda Lecuona, 2008). This structural shift was accompanied by an explicit prohibition of the use of torture to produce confessions during pre-trial detention, providing judges an avenue to dismiss cases when torture is suspected (Shirk, 2010).

2.5 Reducing Torture: Institutions and Incentives

In order to understand Mexico's current torture epidemic, it is necessary to first examine the political environments in which states typically employ this form of abuse. According to Wantchekon and Healy (1999), illiberal and liberal states may practice torture for different reasons. While illiberal states, such as dictatorships, use torture and mistreatment as a means of social control, liberal states only employ torture to extract information. Luban (2005) identifies specific motivations within these broader categories, citing one reason why liberal states may torture and four reasons that illiberal states may also condone the practice.

Specifically, Luban argues that illiberal states may employ torture in the context of military victory (what Luban deems "victor's pleasure"), to incite terror to induce submission, and to punish alleged criminals. The final illiberal use of torture is to extract confessions. In this scenario, agents of the criminal justice system employ the practice as a result of established norms dictating the legitimacy of confessions as culpatory evidence. Meanwhile, liberal states typically use torture in a scenario termed "the ticking bomb." In this case, the state employs torture as a method of intelligence gathering in order to prevent future evils, such as terrorist attacks (Luban, 2005; Wantchekon and Healy, 1999).

However, distinctions based on regime type provide a limited explanation of Mexico's state-sanctioned torture. While this literature tends to characterize regimes as dichotomous (illiberal versus liberal), most scholarly work acknowledges that states fall on a continuum from fully authoritarian to fully democratic (The Economist Intelligence Unit, 2019; Emmerich et al., 2010; Ethier, 1990; Preston & Dillon, 2004; Walker, 2013). In Mexico's case, most assessments agree that democracy is hardly a finished project (The Economist Intelligence Unit, 2019; Emmerich et al., 2010; Preston & Dillon, 2004). While the country has managed to adopt promising legal and institutional frameworks in support of democratic reform, the implementation of such mechanisms often lags behind (Emmerich et al., 2010). In part, this has resulted in growing concerns for human rights abuses, impunity rates, and rule of law in general (Levy, Bruhn, Zebadúa, 2006). As Levy, Bruhn, and Zebadúa write, "Mexico's road toward democratization is lined with potholes, red lights, yellow lights, wrong turns, and very disputed speed limits." While Mexico has made major strides toward the consolidation of its democracy since 2000, the country still faces obstacles ahead. As a result, it is somewhat fruitless to classify Mexico's state-sanctioned torture as fully "illiberal" or fully "liberal," according to Luban's framework.

Additionally, scholars have found certain exceptions to democratic states' behavior. Indeed, previous literature has found that the effect of democratic institutions on reducing torture diminishes when the state is faced with "violent dissent" (Davenport, Moore, & Armstrong, 2007). As Gambetta (2003, pp. 33) writes, "the bigger and nastier the threat is (or is thought to be) the harsher are the infringements on civil liberties that can be justified and accepted by the public." In other words, the political checks and balances that

Forced Confessions

typically prevent the executive from committing or sanctioning acts of torture tend to erode in the face of violent threat. While this work has largely examined the role that terrorist groups play in creating this “violent dissent” in democratic polities (Greenberg, 2005; Luban, 2007), Magaloni & Rodriguez (2019) apply this line of reasoning to Mexico, positing that the activities of criminal organizations have resulted in harsh repression by the state. Since Mexico’s democratic opening, the country has faced growing levels of insecurity as a result of these criminal groups (Osorio, 2015; Ríos, 2013). In response, the government increased its militarized counter-drug operations against trafficking organizations under President Felipe Calderon, resulting in increased levels of violence (Magaloni, Magaloni, & Razu, 2018; Magaloni & Rodriguez, 2019; Osorio, 2015; Ríos, 2013; Shirk & Wallman, 2015). Magaloni, Magaloni, & Razu (2018) present empirical evidence demonstrating increased levels of torture during this time period, particularly when criminal suspects were subject to detention or accused of drug trafficking.

However, Davenport, Moore, and Armstrong (2007) identify a mediating variable that may predict a state’s repressive response to violent threats. In particular, they argue that governments that possess “veto,” or constraints on an executive’s authority as a result of the separation of powers, are less likely to employ torture as a repressive response. Polities with high levels of veto necessarily contain incentive structures that push actors to challenge an executive’s use of torture. In particular, these states will consist of competitive legislatures and independent judiciaries, including at the subnational level. As the authors demonstrate, the greater the level of separation of powers, the greater the likelihood that any actor will expose the executive’s use of torture. This acts as an implicit check on the executive’s potential responses to violent threats, reducing the likelihood that the state will employ torture.

This work is in line with existing literature emphasizing the impact that institutions can have on restraining state behavior (North, 1991; Przeworski, 2004; Walker, 2013). As Walker argues, democratic institutions provide the structure for autonomous political actors to pursue their individual interests. This structure includes both incentives and restrictions that guide actors’ behavior (Walker, 2013). Mexico’s criminal justice reform seeks to provide such a structure to re-shape the behavior of government actors, albeit in a challenging security environment. As outlined above, the reform provides stronger counterweights to the role that the prosecutor played in the former system, increasing the level of veto power of other judicial actors, such as judges, and redefining the incentive structures that drive the behavior of these actors. As Zepeda Lecuona (2004, p. 331) explains, reductions in torture cannot be explained by mere changes in attitude; rather, reductions in these types of abuses are the result of changes to the incentive structures that influence how judicial actors operate within the system. Even in the face of Mexico’s mounting security challenges, empirical evidence suggests that reforms introducing such changes may have a significant effect on state actors’ repressive behaviors.

2.6 Evaluating the Reform: Achievements and Challenges

Nonetheless, the success of democratic reforms in reducing the incidence of torture is dependent on the full and successful implementation of such reforms. As Zepeda Lecuona (2008, p. 124) argues, “80% of the criminal reform’s success lies in its implementation” [own translation]. As such, this section discusses the trajectory of Mexico’s criminal justice reform since its enactment in 2008, examining its successes, weaknesses, and existing challenges to full implementation.

While the constitutional reform was passed in 2008, certain states approved and began the use of oral adversarial proceedings as early as 2004 (Nuevo León in 2004, Chihuahua in 2007, and Oaxaca in 2007). These initiatives provided a precedent for other states’ penal reforms and also served as precursors to the constitutional reform in 2008 (Rodríguez Ferreira & Shirk, 2015). The Mexican Congress gave the country an eight-year timeframe to fully implement the changes outlined in the reform. While the deadline of June 18, 2016 has long passed, Mexico’s judicial districts are still in the process of implementing and consolidating these sweeping changes. As México Evalúa (2019) noted in its most recent performance review of the SJPA, there is still much work to be done. Specifically, judicial training and professionalization efforts have diminished since the implementation phase (2008-2016), and these efforts often lack inter-institutional coordination that could result in more profound improvements to SJPA functioning. México Evalúa also argues that judicial actors continue to lack the resources and training necessary to conduct thorough criminal investigations that would produce legitimate evidence to be presented in criminal trials. Lastly, the report laments the lack of statistical information that is shared across judicial agencies and with the public. As the authors note, this information void has made evaluation of the SJPA’s performance a burdensome task.

Despite these challenges, researchers have already been able to demonstrate the reform’s positive impact on the incidence of human rights abuses in Mexico. For instance, World Justice Project (WJP) presented data demonstrating a marked difference in the incidence of forced confessions between states that implemented the reform between 2007 and 2012 (Baja California, Chihuahua, Mexico State, Morelos, Guanajuato, Oaxaca, Yucatán, and Zacatecas) and states that implemented the reform after 2012. Specifically, WJP reported that from 2005 to 2016, early implementer states observed a 70% decrease in the number of confessions that were the result of pressure or aggression, while all other states cumulatively observed a 34% decrease during the same period (World Justice Project, 2018).

Magaloni and Rodríguez (2019) produce similar findings by analyzing data from the National Survey of the Population Deprived of Liberty (*Encuesta Nacional de Población Privada de la Libertad*, ENPOL), a survey of 58,127 individuals that were imprisoned in Mexico in 2016. Magaloni and Rodríguez examined prisoners’ reports of torture (e.g.,

Forced Confessions

electric shocks, burns, sexual abuse) and compared reports of individuals arrested before the date of SJP implementation versus after implementation. As Mexico's states and municipalities differed in the date of implementation, the researchers employed sixty-five (65) distinct dates of implementation to capture a more localized effect of the SJP. The findings demonstrated statistically significant declines in the reported incidence of torture and threats in the period after implementation. Specifically, the probability that a prisoner would experience torture in the new system fell by 6% (Magaloni & Rodriguez, 2019).

While initial research suggests that the incidence of torture has decreased since the implementation of the reform, further analysis is needed to confirm the reform's impact on the incidence of forced confessions. WJP has presented preliminary data supporting the connection between SJP implementation and a reduced incidence of forced confessions. However, a judicial district-level analysis of these figures pre- and post- reform has yet to be conducted. As such, this study seeks to both replicate the findings of Magaloni and Rodriguez (2019) in order to demonstrate their validity, while also providing evidence of the reform's impact on the use of forced confessions as a prosecutorial tool at the level of implementation.

2.7 A "Disturbing Imbalance": Criminal Detention under the SJP

Indeed, the SJP represents a paradigm shift toward a criminal justice system more sensitive to principals of democracy and human rights. Still, the reform contains certain measures that have remained controversial among human rights advocates—namely, the continuance of *arraigo*. *Arraigo* is a form of preventive detention that does not require criminal charges. As such, the practice defies the principal of presumption of innocence in Mexico's criminal justice system (Deaton & Rodriguez Ferreira, 2015; Uildriks, 2010). As Zepeda Lecuona (2008, p. 118) argues, the continuance of *arraigo* under the SJP represents a "disturbing imbalance" in Mexico's criminal justice system, as it reduces the standard required to subject an individual to the criminal process [own translation]. While public prosecutors are normally required to present evidence before a judge establishing the need for a criminal suspect's detention, *arraigo* suppresses this requirement. Instead, the prosecutor need only demonstrate the possibility of the suspect's involvement in certain criminal activities.

In the SJP's current format, *arraigo* is now restricted to cases involving organized crime; however, detention is allowed for a continuous period of forty (40) days, which can be extended for up to eighty (80) days (United Nations Committee Against Torture, 2018). As previously discussed, the reliance on detention in Mexico's criminal proceedings has served to reinforce the practice of torture and mistreatment by police and public prosecutors by providing ample opportunity for such acts to occur. In fact, evidence suggests that public prosecutors may intentionally classify certain criminal acts under the umbrella of organized crime in order to allow for a suspect's detention. Under this

procedure, the prosecutor is then permitted to introduce evidence that has not been formally reviewed and sanctioned during a criminal trial—a step required for all other criminal evidence under the SJPA (Zepeda Lecuona, 2008). This only serves to dismantle the reform’s incentive structures meant to restrict prosecutorial abuses, such as torture and forced confessions, in the context of criminal detention.

As such, *arraigo*’s presence in the new system represents the ultimate paradox; its existence sabotages the very reforms meant to curb judicial misconduct and human rights abuses. Indeed, substantial reporting has confirmed the link between the practice of *arraigo* and increases in reports of torture and forced confessions (CMDPDH, 2019b; Deaton & Rodriguez Ferreira, 2015; Magaloni, Magaloni, & Razu, 2018; United Nations General Assembly, 2014). In its most recent review of Mexico, the UN CAT urged the country to permanently halt the use of *arraigo* in order to reduce the incidence of torture and forced confessions during this type of detention.

Thus, despite the introduction of a sweeping criminal justice reform, structures continue to exist in Mexico that reinforce the use of torture and forced confessions within the judicial system. As such, in its current form, Mexico’s SJPA is not a silver bullet capable of abolishing the practice of torture and mistreatment. Substantial opportunity for reform still exists, particularly in the realm of criminal detention. Still, the reform represents a significant step toward the consolidation of Mexico’s democratic institutions and toward the implementation of prosecutorial accountability measures. While far from a complete solution, initial research demonstrates the link between the reform’s implementation and an observed reduction in the incidence of torture and mistreatment. As such, this study seeks to provide further evidence of the reform’s positive impact on Mexico’s human rights paradigm.

3. Research Question and Methodology

While the overall impact of the reform is yet to be determined, initial research has suggested that the transformation to an accusatorial model of criminal justice has reduced torture, mistreatment, and forced confessions by judicial sector personnel. This study expands upon previous research by examining the incidence of the practice both geographically and temporally using two separate data sets, as outlined below. It replicates recent findings demonstrating the reform’s impact on the incidence of torture and mistreatment by judicial sector officials, while also examining how the reform influenced the use of torture and mistreatment as a prosecutorial tool. As such, this study will provide evidence in response to the following research question: How did Mexico’s criminal justice reform impact the incidence of torture and mistreatment by judicial sector officials?

3.1 Defining Torture and Cruel, Inhuman, or Degrading Treatment

In order to allow for effective comparison with existing literature, this analysis employs the common definition of torture as outlined in the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1984:

“any act by which severe pain or suffering, *whether physical or mental*, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a *confession*, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the *consent or acquiescence of a public official* or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” [emphasis added]

According to this definition, torture encompasses harm inflicted for one of the following explicit purposes: (1) extraction of information or confessions, (2) punishment, or (3) intimidation or discrimination. Furthermore, torture is always carried out with the “consent or acquiescence” of state officials or anyone acting in an official state capacity (United Nations General Assembly, 1984). While torture has historically been used for all three purposes in Mexico, as outlined above, this study will examine the first use of torture defined under the convention: torture as form of extracting information or confessions (Luban, 2005).

Although the convention outlines specific criteria for acts of torture, it does not provide a definition for “other cruel, inhuman, or degrading treatment or punishment.” Consequently, scholars have debated the degree to which these two acts differ. Some argue that the severity of suffering is greater for acts of torture, while others maintain that the threshold for severity of suffering is equal, but that the purpose of the acts themselves may differ. Nonetheless, substantial research demonstrates that victims of acts typically defined as “other cruel, inhuman, or degrading treatment or punishment,” such as humiliation, fear, and threats of torture, experience similar levels of psychological pain and suffering as victims of torture. Consequently, there is reason to question the separation of these terms in international and domestic law, as the distinction may imply that “other cruel, inhuman, or degrading treatment or punishment” is a less severe form of torture (Basoglu, 2017).

In its official database of human rights complaints, the CNDH considers torture and “other cruel, inhuman, or degrading treatment or punishment” to be two separate violations. According to Mexico’s Office of Domestic Affairs (*Secretaría de Gobernación*, SEGOB) (n.d.), the difference this classification and torture may lie in the severity of suffering.

However, SEGOB also notes that the Inter-American Convention to Prevent and Punish Torture (IACPPT) (1985) specifies that acts do not have to cause grave suffering in order to be classified as torture (Organization of American States, Article 2). SEGOB concludes that each case must be analyzed individually in order to determine its proper classification. As such, it is not fully known how the CNDH distinguishes between these types of human rights violations.

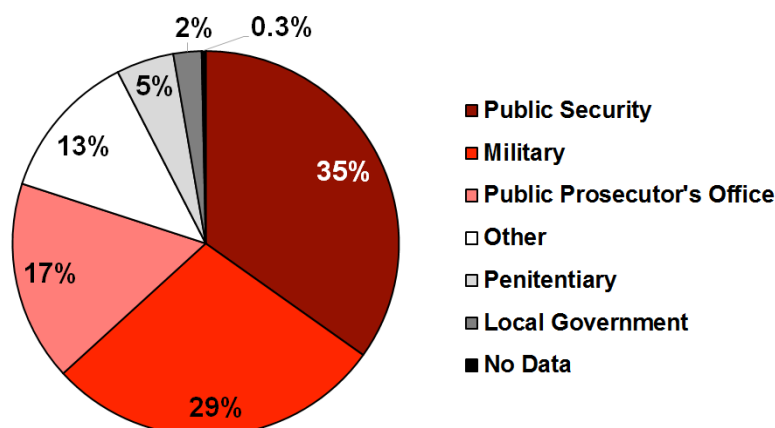
However, there is evidence to suggest that officials intentionally classify cases of torture as “other cruel, inhuman, or degrading treatment or punishment” in order to reduce the perceived severity of certain incidents. In 2003, the UN CAT reported that police often threaten and beat suspects prior to their arrival at the Public Prosecutor’s office. While many of these cases meet the constitutional threshold for torture, they are frequently categorized as cases of “other cruel, inhuman, or degrading treatment or punishment” (United Nations Committee Against Torture, 2003). Thus, the distinction between these cases in Mexico likely fails to capture any difference in the severity of abuse. Consequently, this study will take a comprehensive approach, examining both types of abuse in the context of the judicial reform in Mexico. For purposes of clarity, when this study refers to torture, it is inclusive of incidents defined as “other cruel, inhuman, or degrading treatment or punishment.”

3.2 National Commission of Human Rights Alert System

This analysis first examines torture and mistreatment using a hand-compiled database of torture complaints published by the CNDH on its National Human Rights Violation Alert System (*Sistema Nacional de Alerta de Violación a los Derechos Humanos*). It includes complaints made to the CNDH from January of 2014 to August of 2019 against institutions at all levels of government (municipal, state, and federal). However, because the CNDH is the national human rights ombudsman, a large proportion of the published complaints were submitted against state or federal institutions as opposed to municipal bodies. Each complaint is classified geographically according to the state in which the individual was arrested and also by one of six institutional categories classifying the type of government agency implicated in the report. These categories include (1) public security forces (e.g., federal and state police), (2) military (e.g., the army, the navy), (3) public prosecutor’s offices, (4) penitentiaries, (5) municipal agencies, and (6) “other” institutions. The “other” category includes government bodies such as the National Institute of Migration (*Instituto Nacional de Migración*, INM); Mexico’s state oil company, *Petroleos Mexicanos*; the Mexican Institute of Social Security (*Instituto Mexicano del Seguro Social*, IMSS); state public health offices; and various other institutions that could not be grouped into a single classification. Additionally, a portion of the complaints included in this data set do not identify an institution responsible for the reported violation (listed at “N/D” in Figure 1).

Forced Confessions

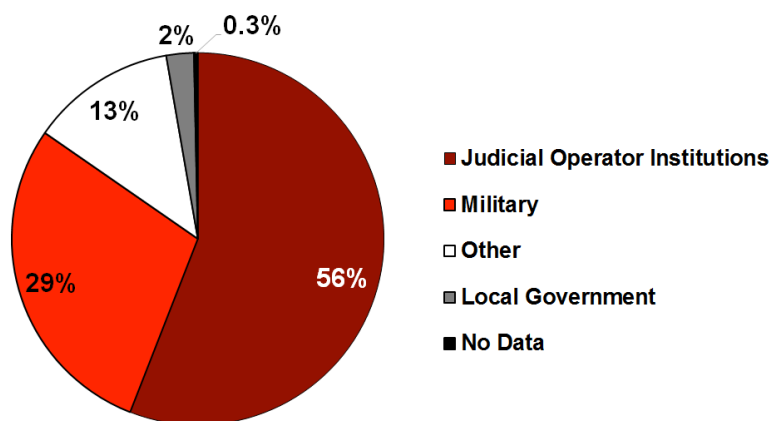
Figure 1: CNDH Torture & Mistreatment Complaints by Institution Type (January 2014-August 2019)



Data source: CNDH National Alert System

Of the institutional categories outlined in Figure 1, three operate directly within Mexico's criminal justice system: public security forces, public prosecutor's offices, and penitentiaries. Together, these government bodies represent a majority of cases of torture reported to CNDH from 2014 to August of 2019, with 2,174 of 3,887 total complaints (see Figure 2).

Figure 2: CNDH Torture & Mistreatment Complaints Against Judicial Versus Other Institutions (January 2014-August 2019)



Data source: CNDH National Alert System

In order to examine how the judicial reform may have affected the number of torture and mistreatment complaints submitted to CNDH, this analysis focuses exclusively on cases in which judicial operator institutions were reported to be responsible for the alleged abuse(s) ($n = 2,174$). As previously mentioned, these cases include complaints made against public security institutions, public prosecutor's offices, and penitentiaries. These cases were summed by state ($n = 32$) for each year that data was available (2015-2018). Next, in order to compare CNDH data geographically, CONAPO state population estimates were retrieved for each year (*Consejo Nacional de Población*, 2019). These figures were used to compute the number of complaints of torture per one million inhabitants in each state, thus controlling for state population.

Data was also collected from annual reports produced by the Center of Investigation for Development A.C. (*Centro de Investigación para el Desarrollo A.C.*, CIDAC) and México Evalúa measuring the comparative level of judicial reform implementation and performance across Mexico's thirty-two (32) states. These reports assess state reform performance on a variety of measures, including the capacities of judicial institutions, the effective implementation of reform mandates and programs, and various other measures examining results of the reform. CIDAC and México Evalúa aggregate these measures into an annual index with a scale of 0 to 1,000, with 1,000 representing the "ideal standard" of judicial reform implementation in a given state (CIDAC, 2016; CIDAC, 2017; México Evalúa, 2018; México Evalúa, 2019).

For each year from 2015 to 2018, separate correlation and regression analyses were conducted in order to detect any geographic relationship between the criminal justice reform and the number of CNDH torture complaints. Based on the observations of previous research, this study hypothesized that states with higher scores of judicial reform performance would see decreased CNDH reports of torture by judicial operators.

While the results of this analysis are useful in assessing the initial relationship between the reform and the use of torture by judicial sector operators, this methodology has its limitations. Specifically, one challenge of employing CIDAC and México Evalúa index data is that it is an indirect measure of judicial operator accountability. As previously mentioned, the index is a broad measure that takes into account state resources, capacity, and adherence to reform mandates. While it is probable that police and prosecutors operating in states with higher reform implementation scores are held to higher ethical standards, no data exists to draw this conclusion directly. As such, the results of this initial analysis are meant to serve merely as a point of departure for further investigation.

3.3 National Survey of the Population Deprived of Liberty (ENPOL)

This study also examines torture, mistreatment, and forced confessions, as reported by members of Mexico's detained population. Specifically, the ENPOL (*Encuesta Nacional de*

Forced Confessions

Población Privada de la Libertad) survey conducted by INEGI asks 58,127 participants to report their experiences and interactions with the criminal justice process in Mexico. In order to assess any significant differences in respondent data before versus after the reform, this analysis employs municipal-level implementation dates. While the 2008 criminal justice reform set an implementation deadline of June 18, 2016, many municipalities began operation under the new system prior to this date. As such, the implementation date employed to compare torture and mistreatment reports before and after the reform varies by municipality.

In total, this analysis includes fifty-five (55) separate dates of implementation (December 2004-June 2016) compiled by a group of Justice in Mexico researchers, including the author. Each date was verified by official judicial announcements and local media reporting. The use of municipal implementation dates helps to capture a more localized effect of the reform on the incidence of torture and forced confessions. In a small portion of cases, the implementation date was not clear based on official reports (180 of 2,459 municipalities). As such, cases in which the respondent was arrested in a municipality with an unknown implementation date were excluded from this analysis. Additionally, this analysis excluded cases in which detainees were accused of a federal crime in order to examine the isolated effect of a state's reform implementation on the handling of criminal cases. This left a total number of 30,196 cases for analysis.

The ENPOL asked respondents whether or not they were subject to specific types of violence both following their arrest and during their pre-trial interactions with the public prosecutor's office. The instrument specifically asked if the detained individual was: (1) punched or kicked, (2) beaten with an object, (3) burned, (4) electrically shocked, (5) injured as a result of any part of their body being flattened with an object, (6) injured by a knife, (7) injured by a firearm, and/or (8) forced by threat or physical violence to engage in sexual activities (INEGI, 2016).

This analysis examined responses to items two (2) through eight (8) in order to determine if a respondent was subject to torture or mistreatment. Item one (1), punching or kicking, was excluded in order to separate incidents of excessive use of force from cases of torture and/or mistreatment. Participants that responded affirmatively to any of the aforementioned items were included in the pool of cases for analysis. To assess the impact of the judicial reform, a chi-square test for independence was employed to test for a significant difference in reported use of torture before and after the reform's implementation. This specific statistical test was employed, as it allows for relational analyses using two categorical variables—in this case, presence of judicial reform (present versus not present) and reports of torture (present versus not present). This study hypothesized that the use of torture by judicial operators would demonstrate a significant decrease following the reform's implementation.

The survey also asked respondents to report which types of evidence were presented against them at trial. Categories of evidence included (a) the accused's confession; (b) statements made by individuals who claimed to have witnessed the crime; (c) statements about the accused's criminal record made by individuals that knew the accused; (d) statements made by accomplices to the crime; (e) statements made by other detained persons; (f) phone records, recordings, photos, or texts; (g) fingerprints, blood, hair, or DNA found at the scene of the crime; and/or (h) psychological evaluations conducted at the Observation and Classification Center.

In order to examine the phenomenon of torture as a prosecutorial tool, a second statistical analysis was conducted using response data from detained persons that had already been convicted of a crime and received their sentence. Specifically, this study examined the responses of sentenced participants to items (a), (f), and (g), as outlined above. Together, these items determined the extent to which the prosecution's case rested on the accused's confession as culpatory evidence. Respondents that reported the use of their confession (a) as culpatory evidence, but no documentation or forensic reporting presented to support these statements [(f),(g)] were included in the analysis. Respondents that met these criteria and also reported being the victims of torture were considered to have been subject to a forced confession.

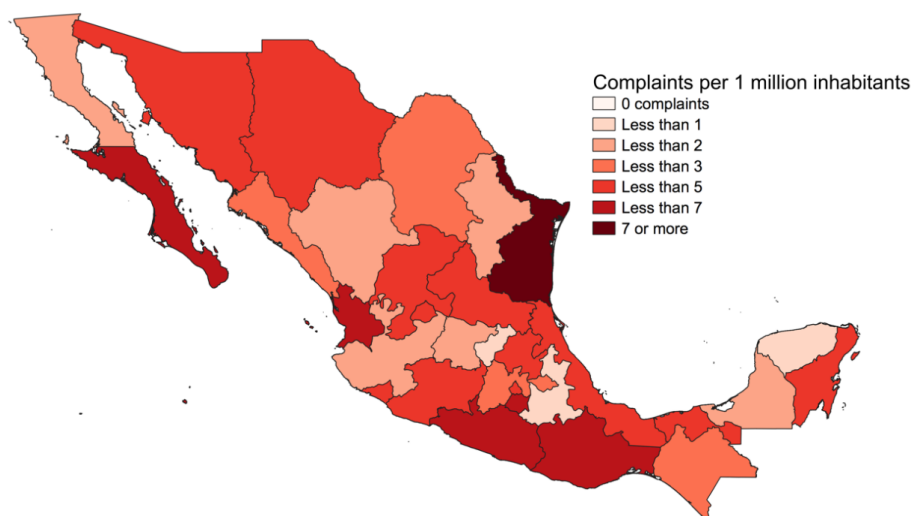
To examine how the criminal justice reform may have influenced the incidence of forced confessions, a second chi-square test was conducted to detect any significant differences in the phenomenon before and after the reform. In line with recent findings demonstrating a significant reduction in certain types of human rights abuses after the implementation of the reform, this study hypothesizes that a significant reduction in forced confessions will be observed following the municipal implementation of the criminal justice reform (Magaloni & Rodriguez, 2019; World Justice Project, 2019). Following two generic chi-square tests, this analysis also conducted separate chi-square tests for each of Mexico's thirty-two states to examine any changes in torture and forced confession at the state level. The author hypothesized that states with higher SJP performance scores would demonstrate greater reductions in torture and forced confessions following the reform's judicial district-level implementation.

4. Results

4.1 National Commission of Human Rights (CNDH) Alert System

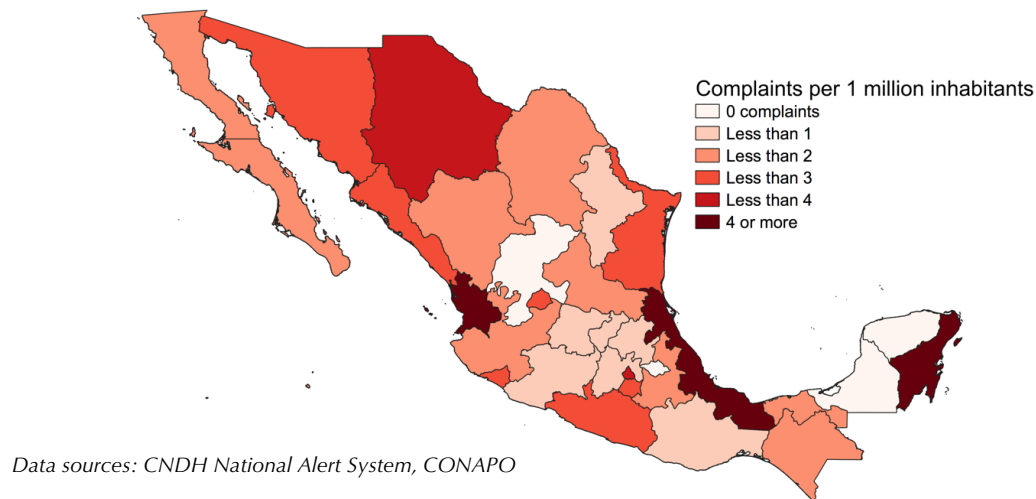
An initial analysis revealed that the incidence of torture and mistreatment complaints against judicial sector operators varied significantly both temporally and geographically. From 2015 to 2018, the states with the lowest average incidence of CNDH complaints per one million inhabitants were Yucatán (0.36), Querétaro (0.65), and Puebla (0.8). Conversely, Tamaulipas (12.10), Nayarit (6.94), and Guerrero (6.70) demonstrated the highest average rate of torture and mistreatment complaints against judicial sector operators during this time period (See Figure 3). However, state-level data also show that the incidence of CNDH complaints has decreased over time. In 2018, the state with the highest complaint rate was Nayarit (5.60), followed by Quintana Roo (4.70) and Veracruz (4.37). Additionally, four states registered zero complaints in 2018 (Campeche, Tlaxcala, Yucatán, and Zacatecas) (See Figure 4).

Figure 3: CNDH Complaints of Torture and Cruel, Inhuman, or Degrading Treatment against Judicial Sector Operators per 1 Million Inhabitants (Average 2015-2018)



Data sources: CNDH National Alert System, CONAPO

Figure 4: CNDH Complaints of Torture and Cruel, Inhuman, or Degrading Treatment against Judicial Sector Operators per 1 Million Inhabitants (2018)



As outlined above, this study hypothesized that states with higher scores on judicial reform performance would see fewer CNDH reports of torture and mistreatment by judicial operators. An initial analysis assessing the geographic relationship between criminal justice reform performance and torture complaints revealed little to no association between the two variables from 2015 to 2017. However, in 2018, the variables demonstrate a significant negative relationship. In other words, states with higher reform performance scores did indeed demonstrate moderately reduced levels of torture by judicial sector operators that year.

Separate analyses were conducted for each year that data for both indicators were available (2015-2018), as shown in Figure 5. In 2015 and 2017, a mild negative correlation was observed ($r = -0.24$), while data for 2018 produced a moderate negative correlation ($r = -0.43$). However, only data from 2018 revealed a significant relationship ($p = .01$), while analyses conducted using 2015, 2016, and 2017 data were not significant ($p > .05$).

Annual regression analyses revealed a similar pattern to annual correlation tests. While 2015, 2016, and 2017 did not yield significant results, data from 2018 demonstrated a significant R-Squared value ($R^2 = .18$, $p = .01$). In other words, the level of state SJPA performance accounted for 18% of observed variation in the incidence of torture and mistreatment complaints made to CNDH.

Forced Confessions

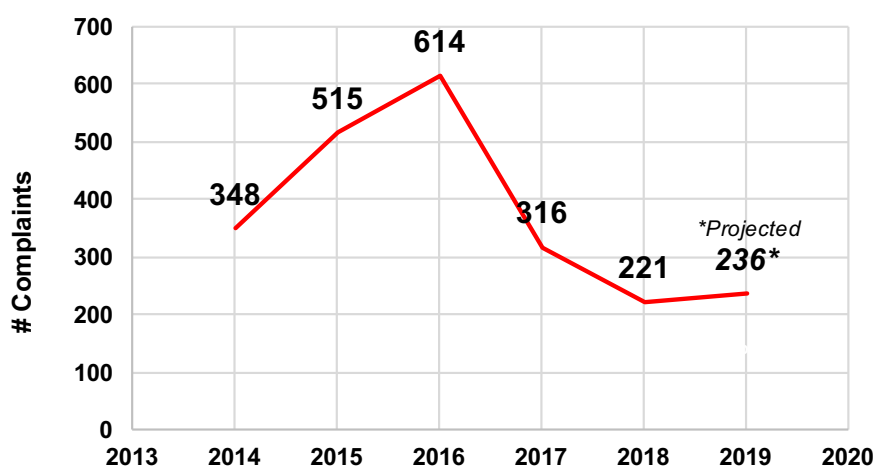
Figure 5: Results of Annual Correlation and Regression Analyses between CIDAC/México Evalúa Ranking Index and Number of Torture and Mistreatment Complaints per 1 Million Inhabitants

Year	Correlation coefficient	R-Squared	P-Value (Significance)
2015	$r = -.24$	$R^2 = .06$	$p > .05$
2016	$r = -.04$	$R^2 = .00$	$p > .05$
2017	$r = -.24$	$R^2 = .06$	$p > .05$
2018	$*r = -.43$	$*R^2 = .18$	$*p = .01$

Data sources: CNDH National Alert System, CIDAC, México Evalúa, CONAPO

Moreover, consistent with the results presented in Figure 5, states identified as having the highest incidence of torture complaints in 2018 (see Figure 4) also possessed the lowest reform performance scores. Nayarit, Quintana Roo, and Veracruz not only demonstrated the highest rates of torture in 2018, but they were also ranked among the bottom four performers in terms of state SJA performance scores (31, 30, and 29 of Mexico's 32 states, respectively). Furthermore, two states with zero registered complaints in 2018, Yucatán and Zacatecas, ranked in the top eight states in terms of reform performance (5 and 8 of Mexico's 32 states, respectively).

Figure 6: CNDH Torture and Mistreatment Complaints against Judicial Operator Institutions (January 2014-August 2019)



Data source: CNDH National Alert System

As shown in Figure 5, the relationship between judicial reform performance and the incidence of torture complaints was weakest in 2016 ($r = -.04$, $R^2 = .00$). While the factors influencing this result have yet to be identified, a frequency analysis revealed that in the same year, the number of torture and mistreatment complaints submitted to the CNDH increased significantly (See Figure 6). This suggests that some combination of factors unrelated to judicial SJP performance may be associated with the increase observed in 2016. This study discusses these potential factors in detail below.

As such, this investigation's geographic hypothesis that states with greater SJP performance would see reduced levels of torture by judicial sector operators was only partially substantiated. While annual correlation analyses revealed a mild to moderate relationship, only data from 2018 yielded a significant association. Annual regression analyses demonstrated a similar pattern of results, yielding insignificant and negligible associations from 2015 to 2017. However, a moderately strong relationship between judicial reform performance and the incidence of torture complaints was observed in 2018. These findings suggest that factors unrelated to judicial reform influenced rates of torture complaints, particularly from 2015 to 2017. However, they also indicate that the SJP may be partially responsible for recent reductions in torture complaints. Nonetheless, analyses conducted using detainee survey data provided more reliable evidence of the reform's effect on torture as a prosecutorial tool in Mexico.

4.2 National Survey of the Population Deprived of Liberty (ENPOL)

As previously mentioned, it was hypothesized that a significant reduction in reports of torture would be observed after the implementation of the judicial reform in Mexico. A chi-square test for independence was conducted using ENPOL data in order to detect any such difference following the localized implementation of the criminal justice reform. This test sought to replicate the findings of Magaloni and Rodriguez (2019) by examining incidents of torture and pre- and post- reform, as reported by members of Mexico's detained population.

Indeed, a chi-square test of examining respondent reports of torture revealed a significant difference in the phenomenon following municipal-level SJP implementation. Specifically, the chi-square test showed an extremely significant difference in the number of detained persons (pre-sentenced and sentenced) subject to torture pre-SJP implementation and post-SJP implementation, $\chi^2 (1, N = 30,196) = 37.8$, $p = .000$ (See Figure 7).

Forced Confessions

Figure 7: Results of Chi-square Test and Descriptive Statistics for Reports of Torture and Mistreatment by Presence of Municipal Reform Implementation at Time of Arrest

	Presence of Reform at Time of Arrest	
	Not Present	Present
No Torture	10,183 (45.6%)	3,915 (49.7%)
Torture	12,129 (54.4%)	3,969 (50.3%)

Note. $\chi^2 = 37.8$, $df = 1$. Numbers in parentheses indicate column percentages.

*** $p = .000$

Data source: ENPOL

The observed reduction was in line with the findings of Magaloni and Rodriguez (2019). Namely, 54.4% of respondents who were arrested prior to the reform's implementation reported being subject to torture from the time of their arrest to their time in the Public Prosecutor's office. However, 50.3% of respondents arrested in municipalities that had already implemented the reform reported having experienced torture, representing an extremely significant 7.4% decrease pre- to post- reform.

This study also hypothesized that a corresponding decrease would be observed in forced confessions following the municipal implementation of the criminal justice reform. Indeed, a chi-square test for independence revealed a marginally significant reduction in the number of forced confessions reported by sentenced detainees after the implementation of the reform, $\chi^2(1, N = 16,098) = 3.6$, $p = .058$. Specifically, 33.3% of respondents arrested prior to the reform reported having been subject to a forced confession, while 31.6% of respondents reported the same following the reform. Overall, these data reflect a marginally significant 5% decrease in the reports of forced confessions after municipal-level SJP implementation.

Figure 8: Results of Chi-square Test and Descriptive Statistics for Reports of Forced Confessions by Presence of Municipal Reform Implementation at Time of Arrest

	Presence of Reform at Time of Arrest	
	Not Present	Present
No Forced Confession	8,093 (66.7%)	2,713 (68.4%)
Forced Confession	4,036 (33.3%)	1,256 (31.6%)

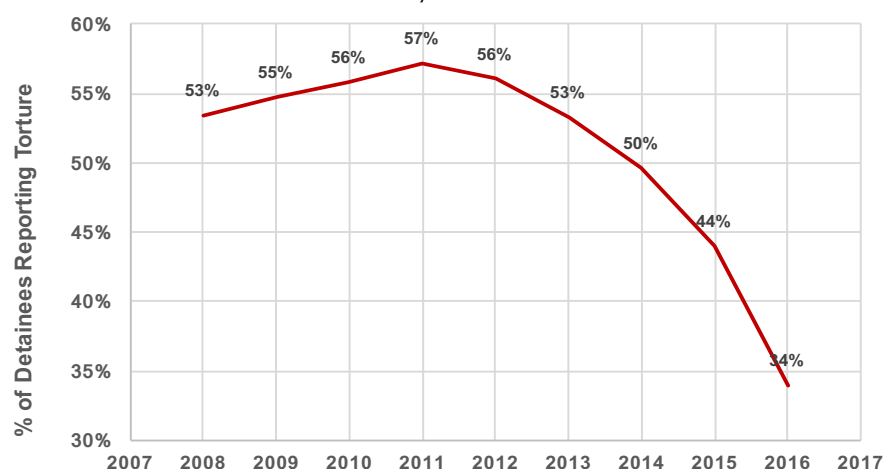
Note. $\chi^2 = 3.6$, $df = 1$. Numbers in parentheses indicate column percentages.

$p = .058$

Data source: ENPOL

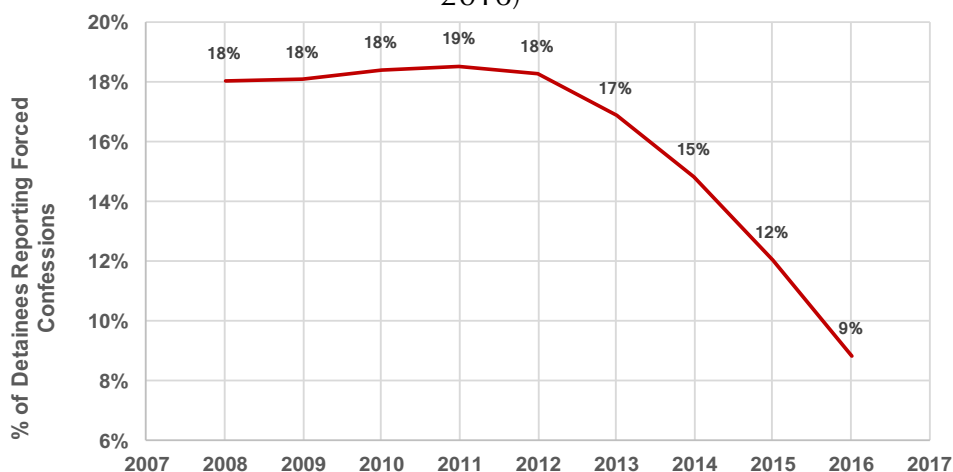
Both of the above findings seem to indicate that the municipal implementation of the reform had a significant impact on the incidence of torture and forced confessions in Mexico's criminal justice system. These decreases can be observed in Figures 9 and 10, during the period of reform implementation from 2008 to 2016. While the data above examines cases from 1980 to 2016, these figures capture a snapshot of the reform period, during which Mexico implementing the reform in a staggered fashion at the municipal level. As observed in Figures 7 and 8, the percentage of detainees reporting torture and forced confessions decreases during this period of gradual implementation. Consistent with the above statistical findings, these data provide further evidence of the reform's impact on the incidence of torture and forced confessions.

Figure 9: Percentage of Detainees Reporting Torture and Mistreatment from Time of Arrest through Stay at Public Prosecutor's Office by Arrest Year (2008-2016)



Data source: ENPOL

Figure 10: Percentage of Detainees Reporting Forced Confessions by Arrest Year (2008-2016)



Data source: ENPOL

Forced Confessions

However, chi-square tests for independence conducted at the state level yielded mixed results, albeit in line with the trend observed in Figure 9. In most cases, significant differences in torture between detainees arrested before versus after the reform were not observed simply due to the small sample size at the state level. As such, a reporting threshold was established at three-hundred (300) cases for each group (arrest pre-reform versus arrest post-reform), or six-hundred (600) cases per state. This allowed the investigation to examine a more robust pool of survey data before versus after SJPA implementation.

Figure 11: Results of Individual Chi-square Tests by State, Reports of Torture by Detainees Arrested Prior to Reform Implementation versus After Reform Implementation

State	N	Pre-Reform			Post-Reform			% Change	2016 <i>Hallazgos</i> Score (0-1,000)
		n	# Tortured	% Tortured	n	# Tortured	% Tortured		
Baja California	1,762	1,230	674	54.8%	532	177	33.3%	-39.3%***	384
Durango	568	252	138	54.8%	316	105	33.2%	-39.3%***	286
Mexico City	3,944	3,388	1,472	43.4%	556	183	32.9%	-24.2%***	240
Mexico State	2,860	1,050	651	62.0%	1,810	1,075	59.4%	-4.2%	230
Morelos	742	334	221	66.2%	408	231	56.6%	-14.4%**	251

***p<.001, **p<.01

Data Sources: ENPOL, México Evalúa

As shown in Figure 11, each state that met the threshold for 300 cases in each group (600 per state) demonstrated reductions in reported torture pre- to post- reform implementation. However, these reductions were only significant in four out of five states (Baja California, Durango, Mexico City, and Morelos). Nonetheless, these states saw reductions in reported torture well beyond the national average of a 7.4% decrease. Specifically, Baja California and Durango each demonstrated an extremely significant 39% decrease pre- to post-reform. Mexico City also saw an extremely significant decrease of 24% after the reform's implementation and Morelos showed a significant 14% decrease. Mexico State, on the other hand, demonstrated a smaller 4.2% reduction that was not significant pre- to post-reform (p=.17).

Nonetheless, only five states met the selection criterion of 600 cases per state, and only four of these five states yielded significant results in individual chi-square tests. Thus, it was not possible to evaluate the subnational hypothesis that state with higher SPJA performance scores would see greater reductions in torture. Still, it is worth noting that the state with the highest *Hallazgos* score saw the greatest significant reduction in torture (Baja California), while the state with lower SJPA score saw the smaller significant reductions of

the five states (Mexico City, Morelos) (See Figure 11). However, due to the minimal number of cases, more data is necessary in order to evaluate the subnational hypothesis regarding torture.

Figure 12: Results of Individual Chi-square Tests by State, Reports of Forced Confessions by Sentenced Detainees Arrested Prior to Reform Implementation versus After Reform Implementation

State	N	Pre-Reform			Post-Reform			% Change	2016 Hallazgos Score (0-1,000)
		n	# forced confessions	% subject to forced confession	# forced confessions	% subject to forced confession			
Chiapas	383	285	93	32.6%	98	40	40.8%	25.1%	264
Chihuahua	772	123	38	30.9%	649	180	27.7%	-10.2%	388
Durango	243	138	20	14.5%	105	22	21.0%	44.6%	286
Mexico City	1,655	1,472	415	28.2%	183	33	18.0%	-36.0%**	240
Mexico State	1,726	651	229	35.2%	1,075	371	34.5%	-1.9%	230
Morelos	452	221	60	27.1%	231	41	17.7%	-34.6%*	251
Querétaro	322	247	41	16.6%	75	2	2.7%	-83.9%**	376

**p<.01, *p<.05

Data Source: ENPOL, México Evalúa

Results of state-level chi-square tests for independence examining reports of forced confessions by sentenced detainees pre- to post- reform yielded more varied findings (See Figure 10). Similar to the methodology employed for reports of torture, a threshold of seventy-five (75) cases per group (150 total per state) was imposed prior to analysis in order to exclude states that lacked sufficient data for analysis. A smaller threshold was utilized to examine forced confessions data, as the overall data pool was smaller in this case (N= 16,098). Of the seven cases that met this criterion, five demonstrated reductions in forced confession after the reform's judicial district-level implementation (Chihuahua, Mexico City, Mexico State, Morelos, and Querétaro). However, these reductions were only statistically significant in three cases (Mexico City, Morelos, and Querétaro). Furthermore, two states showed increases in reports of forced confessions after the reform's implementation (Chiapas and Durango), although none of these increases were close to reaching statistical significance.

Forced Confessions

In fact, all statistically significant results for analyses conducted at the state level demonstrated decreases in torture and forced confessions consistent with the trends observed in Figure 9 and Figure 10. While the size of these reductions varied by state, each of these findings supported the hypothesis that reports of torture and forced confessions would decrease following judicial district-level SJPA implementation.

However, as only seven cases met the selection criterion of 300 cases per state, it was not possible to evaluate the subnational hypothesis that states with higher *Hallazgos* scores would also demonstrate greater reductions in forced confessions following the reform's implementation at the judicial district-level. Furthermore, of these seven cases, only three states demonstrated significant results of a chi-square test comparing the number of reports of torture before versus after the reform's implementation (Mexico City, Morelos, and Querétaro). Still, similar to the results observed in subnational analyses of reported torture, the state with the highest SJPA performance score also saw the greatest significant reduction in forced confessions (Querétaro), while states with lower SJPA scores yielded smaller reductions in forced confessions (Mexico City, Morelos) (See Figure 12). Nonetheless, due to the small number of states included in this analysis, additional data is needed to evaluate the subnational hypothesis regarding the effect of SJPA performance on the incidence of reported forced confessions.

5. Discussion of Findings

On the whole, this study's findings present evidence supporting the hypothesis that Mexico's criminal justice reform has resulted in a reduced incidence of torture and the practice of forcing confessions by judicial sector operators. While a geographic analysis of state reform implementation compared to the rate of torture and mistreatment complaints in each state did not reveal an association from 2015 to 2017, data from 2018 support the hypothesis. Furthermore, a temporal analysis of detainee complaints of torture and forced confessions revealed that these phenomena saw significant decreases following municipal SJPA implementation at both a national and subnational level. As it was not possible to evaluate the subnational association between a state's SJPA performance and reductions in torture and forced confessions following the reform's implementation, further research is necessary to determine if a state's level of adherence to the reform's mandates affects the number of cases of torture and forced confessions at the judicial district level.

The following sections will discuss the significance of these findings and their theoretical implications for the study of state-sanctioned torture. Additionally, this discussion will identify the methodological limitations of this study and propose areas of future research necessary to establishing an empirical relationship between the reform and reductions in torture by judicial operators. This analysis will serve as the basis for specific policy recommendations that could help to reinforce existing mechanisms that have served to reduce torture and mistreatment in the criminal judicial sector.

5.1 The Drug War: Data Implications

While this study's findings point to the significance of the judicial reform in reducing the incidence of torture, these data also suggest that judicial reform is not the only factor influencing the incidence of these abuses. Evidence supporting the geographic hypothesis was found for 2018; however, as illustrated in Figure 5, this pattern was not observed from 2015 to 2017. In particular, 2016 figures demonstrated the weakest association between reform implementation and the incidence of torture complaints. In the same year, a marked increase was observed in the total number of complaints of torture and mistreatment against judicial sector operators (see Figure 6).

In general, scholars have documented the Mexican government's tendency to react to increased organized criminal activity with militarized enforcement, particularly beginning under Felipe Calderón's *sexenio* (Calderón, Heinle, Rodríguez Ferreira, & Shirk, 2019; Osorio, 2015; Shirk & Wallman, 2015). These enforcement operations often involve violent tactics, which have been associated with increased violence by organized crime groups as a result of group fragmentation (Duran-Martinez, 2015; Osorio, 2015). In line with these findings, one potential explanation for the observed increase in torture complaints in 2016 is the impact of such enforcement tactics. Specifically, in 2015, the conflict between the government and the Jalisco New Generation Cartel (*Cartel de Jalisco Nueva Generación*, CJNG) began to escalate. In March of that year, a series of confrontations began between federal and state officials and the CJNG which resulted in the deaths of numerous police officers. In July, Joaquín Guzmán, head of the then-dominant Sinaloa cartel, escaped from prison and was believed to continue running operations for the cartel until his recapture one year later. During this time period, public security forces devoted their resources to both containing the threat of the CJNG and to the recapture of Guzmán (La Rosa & Shirk, 2018).

While it is not known if an increased volume in public security operations directly contributed to the rise of complaints of torture and mistreatment from 2015 to 2016, there are numerous victim testimonies suggesting a relationship. Many report having been detained and tortured until they confessed to associations with specific OCGs (Amnesty International, 2015). Furthermore, Human Rights Watch (2011) confirmed that it was common practice among Mexico's military and security forces to torture individuals to coerce confessions of involvement with specific OCGs. As such, with the rise in public security operations that accompanied the rise of the CJNG and the fall of Guzmán, it is possible that officials also increasingly employed torture as an investigative and prosecutorial tool. This might help to explain the negligible geographic relationship observed between the implementation of the SJPA and the incidence of torture complaints per 1 million inhabitants in from 2015 to 2017, and particularly in 2016. In short, the pressures to investigate and prosecute OCGs may have caused Mexico's public security

Forced Confessions

apparatus to default to more familiar practices—namely, the use of torture to investigate and prosecute criminals.

5.2 Measuring Reform Implementation across States

Although a geographic relationship was observed between SJPA implementation and a reduced incidence of torture, this finding was only significant in 2018. One potential explanation for weaker associations between these variables is that the México Evalúa SJPA score employed for this analysis measures a relatively wide range of factors. Specifically, the index includes indicators examining inter-institutional coordination, judicial planning mechanisms, monetary and infrastructural resources, and public policy surrounding reform implementation (México Evalúa, 2017).

While each of these measures represents a crucial ingredient to the successful consolidation of the SJPA, a more direct indicator assessing accountability measures put in place as a result of the reform may have yielded stronger correlations. As this study is primarily concerned with the unconstrained behavior of prosecutors and other judicial sector operators, a measurement evaluating state performance in this area would help to confirm this study's geographic hypothesis.

Nonetheless, this investigation's finding that judicial reform implementation had a significant effect on the incidence of torture and mistreatment complaints in 2018 remains strong evidence of the SJPA's positive impact on human rights in Mexico. As the reform was only officially implemented in 2016, a large portion of judicial districts had not begun operation under the new system until that year. In fact, 27% of the 2,279 municipalities included in this analysis did not begin operation under the SJPA until 2016. Furthermore, a majority (57%) of municipalities did not begin operation until the last quarter of the implementation period, from 2015 to 2016, despite the reform being passed in 2008. As a result, insignificant associations between implementation scores and the incidence of torture complaints from 2015 to 2017 may be a reflection of the SJPA's general lack of consolidation during this time period. Simply stated, it may have taken several years for the new system to enter into force, producing an observable effect on human rights violations in 2018.

This study's 2018 findings support this assumption. As illustrated in Figure 4, the states with the highest incidence of torture complaints were Nayarit, Quintana Roo, and Veracruz. Coincidentally or not, these states also ranked in the bottom four of Mexico's thirty-two (32) states on México Evalúa's index measuring SJPA implementation. As previously mentioned, two of the four states with zero registered complaints in 2018 (Yucatán and Zacatecas) also ranked in the top eight on the same index. Although this study did not observe a relationship between judicial reform and decreased torture complaints from 2015 to 2017, the significance of the observed relationship in 2018 should be not overlooked. Particularly as the reform is just entering its consolidation

phase, early findings demonstrating a link between the criminal justice reform and decreased torture complaints may point to future advances in human rights protections. Nonetheless, more localized analyses examining the effect of SJPA implementation at the judicial district level did indeed demonstrate evidence that the reform may have reduced rates of torture and forced confessions amongst Mexico's detained population. While state-level performance indicators may have made it difficult to track the reform's impact on these abuses, examining these phenomena at a local level allowed this investigation to examine the reform's effects with increased specificity. Thus, findings at the judicial district level of analysis support the significant trends observed in 2018 with respect to state level SJPA performance and reduced incidents of torture complaints.

5.3 Constraining Judicial Behavior: Gradual Improvements

The findings outlined above imply that the initial implementation of sweeping criminal justice reform in Mexico has had a significant and positive impact on the behavior of judicial sector operators. Prior to the reform's proposal in 2008, Mexico had been unable to implement measures that would constrain the behavior of officials operating in the criminal justice sector (Shirk & Ríos Cázares, 2007). As a result, following Mexico's 2000 democratic opening, these actors defaulted to familiar practices that had served as the *modus operandi* of criminal investigation for decades. Torture continued to serve as an investigative and prosecutorial tool in the twenty-first century, suggesting that Mexico was in need of comprehensive reform that would provide structural incentives to re-shape the behavior of judicial actors.

While the use of torture and forced confessions is still prevalent in Mexico, this study's results suggest that such institutions, even in their early days of implementation, may create new incentive structures that constrain human rights abuses by state officials, even in face of mounting security challenges. In the case of the SJPA, this study found that in just the initial years of the reform's implementation, torture and mistreatment by judicial sector operators had already decreased significantly. While a 7% decrease in reports of torture and a 5% decrease in the incidence of forced confessions following the reform may appear to be negligible reductions, the SJPA has only just begun its process of consolidation within Mexico. Moreover, certain states have already demonstrated larger, significant reductions in detainee reports of torture and forced confessions, suggesting that there may be valuable lessons to learn from the experiences of those states.

Additionally, according to the most recent México Evalúa (2019) report, no state in Mexico has reached the "ideal standard" for implementation at 1,000 points on the index, and just five of Mexico's thirty-two (32) states have reached the "halfway point" of 500 points on the index. In short, while Mexico's SJPA was nominally implemented as of June 2016, there is still much work to be done in terms of actual consolidation. Consequently, relatively small improvements in prosecutorial accountability should be viewed as

Forced Confessions

meaningful steps toward a fully consolidated criminal justice system. As this study's findings suggest, future advances in the reform's implementation should be accompanied by further decreases in investigative and prosecutorial abuses, such as the use of torture to extract confessions.

5.4 The Limits of Official Data in Mexico

While this study provides evidence to support the relationship between Mexico's criminal justice reform implementation and a reduction in the use of torture by justice sector officials, there are several limitations presented by the data employed. Most importantly, scholars, civil society representatives, and international organizations have repeatedly raised concern that officials source of data reporting state human rights abuses in Mexico are opaque, unreliable, and incomplete (Amnesty International, 2015; PRODH, 2015; Correa, Forné, & Rivas, 2019; González-Núñez, 2015; Inter-American Commission on Human Rights, 2015). Specifically, this literature cites the lack of a national registry compiling all complaints of torture.

While the CNDH's National Alert System shows complaints made to the CNDH, the national ombudsman, it does not include complaints made to state government offices. As the PRODH Center (2015) notes, there are an average of four times the number of criminal proceedings at the state level than at the national level. As a result, a large majority of human rights complaints relating to criminal procedures would likely be registered with state government offices. To complicate matters, each state keeps its own records of torture complaints, making it methodologically impossible to analyze the phenomenon on the whole. Furthermore, many cases of torture likely go unreported altogether due to fear of reprisal and official misclassification of torture to lower level crimes, such as abuse of authority (González-Núñez, 2015).

As a result, data collected from the CNDH's National Alert System and employed in the aforementioned analyses possess significant methodological limitations. Had this analysis achieved access to state-level data on torture complaints against judicial sector operators, the observed negative correlations with SJP implementation may have been stronger. As such, one future avenue of research would be to collect state-level complaint data in order to re-test the geographic hypothesis presented in this study.

In the absence of more accurate official statistics on the phenomenon, this study sought to substantiate initial findings using official data by also employing a publicly-available survey data. While the ENPOL survey only included members of Mexico's detained population, which may not be inclusive of all individuals that experienced torture and mistreatment, its exhaustive list of questions helped to capture all forms of torture and mistreatment from the time of arrest to time spent in the Public Prosecutor's office. While it is still possible that detainees underreported the incidence of torture for fear of reprisal,

the data retrieved in connection with this survey are, at the very least, more comprehensive than any existing source of government data on the practice.

In an effort to understand how the reform may have impacted states differently, this analysis disaggregated ENPOL data by state. These subnational analyses revealed large reductions in reports of torture and forced confessions amongst Mexico's detained population after SJP implementation. Significant reductions in torture ranged from 14% (Morelos) to 39% (Baja California, Durango), while significant reductions in forced confessions ranged from 36% (Mexico City) to 84% (Querétaro). As such, these findings provide compelling evidence of the positive impact of the reform's judicial district-level implementation. Nonetheless, the small sample sizes associated with these analyses require that future research employ more robust sources of data to confirm these results and to assess the relationship between SJP performance and reports of torture and forced confessions. While state-level data on torture and forced confessions has not been publicly available, perhaps a larger sample size of detainees at the state level could help to fill this data void and provide opportunities for further inquiry.

6. Policy Recommendations

Informed by the findings and analysis outlined above, this section proposes several avenues of policy recommendations to address the epidemic of torture and mistreatment in the context of Mexico's criminal justice system. Specifically, the author recommends that Mexico improve official sources of data that track torture and forced confessions, explicitly condemn these practices and impose appropriate sanctions on those found guilty of these crimes, strengthen the rights of detainees and abolish the practice of *arraigo*, and stand firm against calls for counter-reform that would undermine Mexico's SJP. While these proposals are quite broad in nature, there are a number of specific recommendations outlined below that the government can take to begin the process of reducing torture and other mistreatment in Mexico.

6.1 Improving Official Data Sources

As discussed, one of the limitations of this study is the lack of reliable official data on the phenomenon of torture in Mexico. Over the years, scholars, NGOs, and international organizations have advocated for the creation of a national registry on torture that would catalog all cases in the same database (PRODH, 2015; United Nations Committee Against Torture, 2019; United Nations General Assembly, 2014; Velasco-Yáñez, 2016). In the face of these pressures, in 2017, Mexico adopted the General Law against Torture, which explicitly mandated the creation of such a registry. The law required that data from public prosecutors' and attorney generals' offices, public human rights organizations, victims' commissions be aggregated in order to better analyze and understand the crime of torture

Forced Confessions

(Cámara de Diputados del H. Congreso de la Unión (2017). However, two years following the enactment of this law, Mexico has yet to demonstrate any progress toward the creation of the registry.

In fact, in its most recent review of Mexico, the United Nations Committee Against Torture set a deadline of May 17, 2020 for Mexico to create such a system whose data would be made publicly available (United Nations Committee Against Torture, 2019). However, there is no information regarding the extent to which the Mexican government has diverted resources toward the implementation of such a system. In reaction to this lack of transparency, a group of Mexican civil society organizations recently joined to create the Observatory against Torture (*Observatorio contra la Tortura*), which provides publicly-available data on specific indicators measuring the law's implementation (Cordero, 2019; Observatorio contra la tortura, 2019). While the observatory provides a substantial amount of data on individual indicators, such as the number of investigations of torture and the number of criminal sentences for the crime of torture, it is inherently limited in scope due to a lack of transparency on the part of the state.

While civil society has been hugely active in monitoring the practices of torture and mistreatment in Mexico, the government has largely failed in providing accurate and reliable data to complement these efforts. Though the enactment of the General Law on Torture was undoubtedly a necessary step toward the eradication of the practice, it has thus far fallen short of its mandates. Without a national registry or some similar tracking mechanism, researchers and civil society organizations will continue to encounter obstacles in measuring how recent reforms, such as the SJPA, have affected the incidence of torture in Mexico. This study was able to utilize survey data in order to create a proxy variable for the phenomenon, but future research will require data beyond 2016 in order to measure the SJPA's impact over time. As such, Mexico must heed its own legal mandates by working to establish a reliable and effective tracking mechanism.

In the absence of such official sources of data, survey instruments such as the ENPOL provide a crucial source of insight into citizens' experiences in Mexico's criminal justice system. As such, Mexico must ensure that this study continues in the years following the SJPA's implementation. Both the United Nations Convention against Torture (2018) and a large network of civil society organizations headed by the CMDPDH (2019a) have urged Mexico's government to ensure that this survey instrument continues to be implemented in the coming years. Without access to these data, researchers, international organizations, and human rights advocates have few reliable sources of information with which to analyze the prevalence of torture in Mexico's judicial system.

6.2 Explicitly Condemning Torture

Mexico has already taken certain steps, albeit delayed, in order to reduce the prevalence of torture as an investigative practice. In 2017, Mexico passed the General Law against Torture (*Ley general para prevenir, investigar y sancionar la tortura y otros tratos o penas crueles, inhumanos o degradantes*), which sought to establish a common definition for the crime of torture, identify specific institutions to investigate and sanction the crime, designate minimum sentencing requirements for those convicted of torture, and establish support mechanisms for victims and their families (Cámara de Diputados del H. Congreso de la Unión, 2017; PRODH, 2018).

Importantly, this legislation mandates that the crime of torture be investigated regardless of the presence of a complaint; any case in which torture may have occurred must be investigated to the full extent of the law (Article 7). Moreover, it establishes that there is no statute of limitation on the crime of torture (Article 8) and the minimum sentence for those convicted of the crime is ten years (Article 26). The law also explicitly prohibits any evidence that was obtained under torture (Article 50) and places the burden of proof on the prosecutor to establish that evidence was legally obtained (Article 51).

While these regulations represent a crucial first step toward the prohibition of torture, the state must ensure that its institutions comply with these newly-established regulations. In line with UN CAT recommendations, Mexico's government must explicitly and publicly condemn both and other forms of mistreatment, sending a strong message that the practice will no longer be tolerated (United Nations Committee against Torture, 2019). Moreover, the government must immediately investigate all instances of torture, placing those accused on administrative suspension in order to reduce the likelihood of coordinated reprisals against complainants.

As the General Law against Torture establishes that there is no statute of limitations for the crime of torture, Mexico must eventually ensure that all previous reports of torture are thoroughly investigated and prosecuted. This is no simple task, as the practice has been employed for decades both as a prosecutorial tool and for motivations of social control, such as silencing political opposition and popular unrest, particularly during the country's Dirty War (McCormick, 2017). Nonetheless, if Mexico wishes to comply with its own legal mandates and ensure the consolidation of its fledgling judicial system, this is a crucial step toward institutional legitimacy.

To complicate matters, Mexico already wrestles with staggering rates of impunity. According to a recent study conducted by the *Universidad de las Américas Puebla* (UDLAP) (2018), Mexico currently possesses the highest impunity rate in Latin America and the fourth highest on a list of sixty-nine (69) countries, behind the Philippines, India, and Cameroon. The number of criminal convictions for torture and mistreatment in Mexico supports this finding. In 2016, state attorneys general reported 3,214 complaints of torture and mistreatment affecting 3,569 victims. However, just eight of these criminal

Forced Confessions

cases were adjudicated. Furthermore, in the period from 2006 to 2015, there were only fifteen (15) federal convictions for torture, despite the submission thousands of complaints to the CNDH in the same period (CMDPDH, 2019a).

As the UDLAP study explains, Mexico's impunity rate at the state level is highly associated with low levels of capacity; states with fewer judges tend to possess the country's highest impunity rates (i.e., Aguascalientes, Baja California, Coahuila, Hidalgo, Mexico State). This lack of capacity has only decreased public confidence in the judicial system, resulting in an increase in the percentage of crimes that go unreported, or the *cifra negra* (Universidad de las Américas Puebla, 2018).

As such, the investigation and criminal prosecution of those accused of torture comes with significant capacity and professionalization challenges. Nonetheless, the state must begin by publicly and explicitly backing the General Law against Torture. It must remain firm in its condemnation of the use of torture as an investigative tool and begin to establish mechanisms capable of tracking the law's incorporation into the SJPA. At the very least, this will allow researchers the opportunity to identify areas for improvement and strategies toward full implementation.

6.1 Strengthening the Rights of the Detained

While crucial steps toward the eradication of torture, reforms such as the SJPA and the General Law against Torture have fallen short. As discussed, one of the primary critiques of the SJPA is that it is, in some ways, a contradiction of itself. It both seeks to guarantee the rights of the accused while also allowing the continuance of practices that reinforce the violation of human rights—namely, the use of detention without charge, or *arraigo*. As such, scholars and international organizations have consistently called upon the Mexican government to outlaw the practice (Deaton & Rodriguez Ferreira, 2015; García, 2016; Velasco-Yáñez, 2016; United Nations Committee Against Torture, 2019; United Nations General Assembly, 2014).

Under the reform, prosecutorial powers to detain organized crime suspects were expanded, allowing detention for an initial period of forty (40) days, which can be extended to a maximum of eighty (80) days. The extension can be granted based on the prosecutor's argument that the suspect represents a flight risk. However, the prosecutor's office is not often required to substantiate such claims, affording them ample discretion in determining the length of detention (Amnesty International, 2005; Uildriks, 2010). Thus, as long as the practice of *arraigo* continues in Mexico, police and prosecutors will always possess the incentive and opportunity to continue the longstanding practice torture. Indeed, the practice of *arraigo* represents an "invitation to torture" (Deaton, 2010).

In addition to abolishing the practice of *arraigo*, the state must also work to afford greater protections to those subject to criminal detention. Upon a suspect's arrest, police or other

officials must immediately bring the individual to the public prosecutor's office in order to reduce the possibility of torture during the initial stages of the criminal process. Additionally, all detainees should be immediately informed of the reason(s) for their detention, granted immediate access to an attorney, and given the opportunity to inform a relative or other person of their detention. In cases where these protections are not afforded to the suspect, a judge must determine that the individual's due process rights were violated and take appropriate corresponding action.

In cases where torture is suspected, suspects must be granted immediate access to medical professionals who are appropriately trained to examine victims of such abuses. These individuals should be trained according to the Istanbul Protocol, a set of international standards for investigating and documenting torture and other mistreatment (Office of the United Nations High Commissioner for Human Rights, 2004). However, the burden of proof should rest on the prosecutor to establish that torture was not employed while the suspect was in the custody of police or the prosecutor's office.

Lastly, in line with the recommendations of the United Nations and civil society groups, Mexico must establish a national registry of detainees that documents the name of each individual in detention. Such a registry should also record the date and time of a suspect's detention in order to prevent officials from doctoring such data to cover up misconduct or abuse (CMDPDH, 2019a; United Nations Committee against Torture, 2019; United Nations General Assembly, 2014).

6.2 Countering the Counter-Reform

Furthermore, a lack of official data inhibits the efforts of researchers and policymakers to contest existing claims that the SJA has worsened human rights abuses in Mexico. Indeed, critics have made claims that corruption and impunity are inherent in the SJA and that the system itself has contributed to increased levels of insecurity across Mexico (Dávila, 2016; World Justice Project, 2018). Critics view the SJA as a "revolving door" that releases criminal actors from detention while failing to protect victims (Sánchez, 2017). Recently, these critical voices have gained traction, and experts monitoring the SJA's performance seem to agree that the threat of counter-reform has grown more credible (México Evalúa, 2019; Tello Arista, 2019). However, experts involved in the SJA's implementation argue that the system's deficiencies are largely the result of insufficient training resources for judicial sector operators (Sánchez, 2017).

The findings of this study support the notion that the SJA is not a silver bullet solution for eradicating certain forms of human rights abuses in Mexico; the reform is just one step in that process. However, these results also suggest that the SJA can indeed be credited for small but meaningful reductions in torture and mistreatment amongst judicial sector

Forced Confessions

operators. This evidence runs counter to claims that the reform has opened the door to further abuse by officials.

According to Shirk and Ríos Cázares (2007), achieving the rule of law in transitioning democracies is often an inherently destabilizing process. During the transition phase, state institutions such as the police and the criminal justice system may adjust too slowly to democratic changes to meet the needs of society. As such, citizens may experience reduced access to justice during this period, negatively influencing their perception of democratic reforms and increasing public demands for justice and accountability. Ironically, this transition period often engenders decreased public confidence in democratic reforms meant to strengthen the rule of law. In the case of the SJPA, it may also result in public calls to revert back to known, authoritarian models of criminal justice. However, as Shirk and Ríos Cázares warn, these appeals threaten to erode the very institutions that serve as the foundation for the rule of law.

Mexico still finds itself in this transition phase, and as such, threats to fledgling democratic institutions must be taken seriously. Mexico must be diligent in continuing its efforts toward the full consolidation of the SJPA, despite calls for a counter-reforms. Some of these proposed changes call for reduced standards of evidence required to obtain convictions, a change that would undoubtedly reestablish prosecutorial incentives to obtain forced confessions (World Justice Project, 2018). As Irene Tello Arista (2019), Executive Director of *Impunidad Cero*, argues, the counter-reform does not seek to establish better protections for victims, as it claims. Instead, its objective is to reestablish a regulatory backing for abuse and judicial malpractice, attempting to solve problems through legislative action rather than tangible change or follow-through. Given these concerns, Mexico must ensure that its commitment to the system's full implementation remains steadfast.

7. Conclusion

This study sought to examine the impact of Mexico's recent criminal justice reform on the practice of torture by judicial sector operators. Based on an abundance of literature documenting the factors that incentivize such crimes, it was hypothesized that the reform would be associated with decreased levels of torture in the judicial sector. Specifically, this study presumed that high subnational SJPA performance scores would be associated with reduced rates of torture by judicial sector officials in those states. Additionally, it was predicted that following the reform's municipal implementation, detainee reports of torture and forced confessions would decline at a national level. While this research also hypothesized that states with higher SJPA performance scores would demonstrate greater reductions in reports of torture and forced confessions following implementation, it was not possible to confirm this conclusion due to insufficient data.

Still, results partially confirmed the geographic hypothesis outlined above. Annual correlation and regression analyses between state reform performance scores and state-level rates of torture and mistreatment complaints against judicial sector operators did not produce significant associations from 2015 to 2017. However, analyses employing 2018 data yielded a significant relationship between the two variables, suggesting that the reform's consolidation over time has had a positive impact on human rights in Mexico's judicial system. Furthermore, insignificant findings from 2015 to 2017 may be explained by factors unrelated to the judicial reform. While it was beyond the scope of the study to identify other variables affecting the relationship during this period, the author hypothesizes that increases in drug war-related enforcement measures may have played a role.

Furthermore, this study's findings substantiated the temporal hypothesis with regard to torture. A chi-square test for independence revealed a significant reduction in the percentage of detainees that reported being subject to torture following the reform's implementation at the municipal level. The temporal hypothesis examining forced confessions was partially confirmed, as a second chi-square test for independence revealed a marginally significant decrease in the percentage of sentenced detainees that reported being subject to a forced confession.

While the observed reductions were relatively small (a 7.4% decrease in torture and a 5% decrease in forced confessions), these results nonetheless represent compelling evidence in favor of the SJP's impact on Mexico's human rights situation. As the SJP's official implementation date fairly recently in 2016, there is still much work to be done to fully consolidate the reform's mandates. As Mexico continues to progress toward the SJP's full and effective implementation, researchers should observe further reductions in the incidence of torture by judicial sector officials. This is supported by the results of state-level chi-square tests, which also showed large and significant reductions in the percentage of detainees reporting torture and forced confessions (39% reductions in torture in Baja California and Durango, 24% reduction in torture in Mexico City, 14% reduction in torture in Morelos, a 36% decrease in forced confessions in Mexico City, and an 84% reduction in forced confessions in Querétaro).

Nonetheless, the existing criminal justice reform may not be enough to address the epidemic of torture. Mexico must also (a) improve official sources of data used to track cases of torture and mistreatment, allowing researchers to monitor the success of state efforts to reduce the practice; (b) explicitly and publicly condemn the practice, instituting appropriately severe penalties for those found guilty of such crimes; (c) establish strong protections for detainees and their families, banning the practice of detention without charge, or *arraigo*; and lastly, (d) remain steadfast in defending the criminal justice reforms amidst growing calls to revert to familiar judicial practices characteristic of one-party rule in Mexico. While these proposals are tied to Mexico's broader challenges in addressing

Forced Confessions

corruption, impunity, and capacity issues, they represent crucial steps toward the country's democratic consolidation and the establishment of institutions that respect its citizens' human rights.

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Appendix A: List of Acronyms

ADR	Alternative dispute resolution mechanism
CIDAC	Center of Investigation for Development A.C. (<i>Centro de Investigación para el Desarrollo A.C.</i>)
CJNG	New Generation Jalisco Cartel (<i>Cartel de Jalisco Nueva Generación</i>)
CMDPDH	Mexican Commission for the Defense and Promotion of Human Rights (<i>Comisión Mexicana de Defensa y Promoción de los Derechos Humanos</i>)
CNDH	National Commission of Human Rights (<i>Comisión Nacional de Derechos Humanos</i>)
CONAPO	National Population Council (<i>Consejo Nacional de Población</i>)
DTO	Drug Trafficking Organization
ENPOL	National Survey of the Population Deprived of Liberty (<i>Encuesta Nacional de Población Privada de la Libertad</i>)
IACPPT	Inter-American Convention to Prevent and Punish Torture
IMSS	Mexican Institute of Social Security (<i>Instituto Mexicano del Seguro Social</i>)
INEGI	National Institute for Statistics and Geography (<i>Instituto Nacional de Estadística y Geografía</i>)
INM	National Institute of Migration (<i>Instituto Nacional de Migración</i>)
SJPA	Accusatorial Criminal Justice System (<i>Sistema de Justicia Penal Accusatorio</i>)
PRI	Institutional Revolutionary Party (<i>Partido Revolucionario Institucional</i>)
PRODH Center	Miguel Agustín Pro Juárez A.C. Human Rights Center (<i>Centro de Derechos Humanos Miguel Agustín Pro Juárez A.C.</i>)
SEGOB	Office of Domestic Affairs (<i>Secretaría de Gobernación</i>)
SESNSP	Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública
UN CAT	United Nations Committee Against Torture
WJP	World Justice Project

Appendix B: List of Figures

Figure 1	CNDH Torture & Mistreatment Complaints by Institution Type (January 2014-August 2019)	18
Figure 2	CNDH Torture & Mistreatment Complaints Against Judicial Versus Other Institutions (January 2014-August 2019)	19
Figure 3	CNDH Complaints of Torture and Cruel, Inhuman, or Degrading Treatment against Judicial Sector Operators per 1 Million Inhabitants (Average 2015-2018)	23
Figure 4	CNDH Complaints of Torture and Cruel, Inhuman, or Degrading Treatment against Judicial Sector Operators per 1 Million Inhabitants (2018)	23
Figure 5	Results of Annual Correlation and Regression Analyses Between CIDAC/México Evalúa Ranking Index and Number of Torture and Mistreatment Complaints per 1 Million Inhabitants	24
Figure 6	CNDH Torture and Mistreatment Complaints against Judicial Operator Institutions (January 2014-August 2019)	25
Figure 7	Results of Chi-square Test and Descriptive Statistics for Reports of Torture and Mistreatment by Presence of Municipal Reform Implementation at Time of Arrest	26
Figure 8	Results of Chi-square Test and Descriptive Statistics for Reports of Forced Confessions by Presence of Municipal Reform Implementation at Time of Arrest	27
Figure 9	Percentage of Detainees Reporting Torture and Mistreatment from Time of Arrest through Stay at Public Prosecutor's Office by Arrest Year (2008-2016)	28
Figure 10	Percentage of Detainees Reporting Forced Confessions by Arrest Year (2008-2016)	29
Figure 11	Results of Individual Chi-square Tests by State, Reports of Torture by Detainees Arrested Prior to Reform Implementation versus After Reform Implementation	30
Figure 12	Results of Individual Chi-square Tests by State, Reports of Forced Confessions by Sentenced Detainees Arrested Prior to Reform Implementation Versus After Reform Implementation	31