

CONCEALING TORTURE

ANALYSIS OF 54 CASES

**COMPLICITY OF
FORENSIC EXPERTS
AT THE ATTORNEY
GENERAL'S OFFICE**



GRUPO DE ACCIÓN
COMUNITARIA



CENTRO PARA
ATENCIÓN DE VÍCTIMAS
DE TORTURA



COMISIÓN MEXICANA DE
DEFENSA Y PROMOCIÓN
DE LOS DDHH



ORGANIZACIÓN
MUNDIAL CONTRA LA
TORTURA

TRANSLATED TO
ENGLISH BY:

JORGE BRAVO



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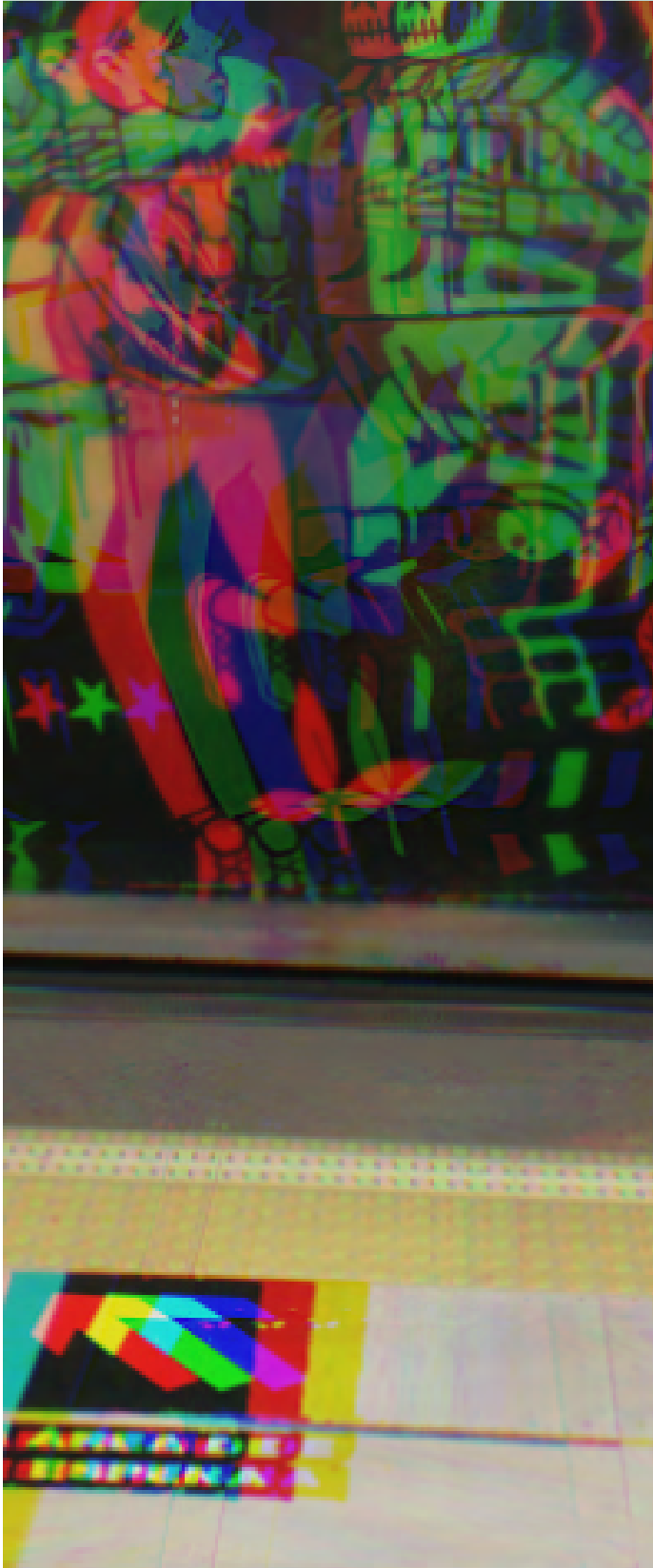


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THE CONCEALMENT OF TORTURE



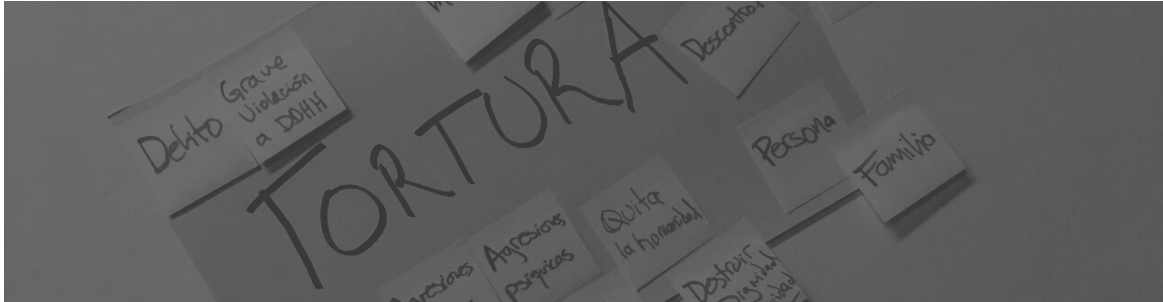
Breaking the cycle of impunity for torture depends on **effective investigation and documentation**. Thorough medical and psychological assessments can provide powerful forensic evidence to corroborate allegations of torture and ill-treatment. The goal of these assessments is for well-trained and independent physicians and psychologists to conduct in-depth interviews and examinations, to document all signs and sequelae of physical and psychological abuse, and to provide a medico-legal affidavit documenting their findings. These affidavits, in turn, should serve as key evidence in prosecuting the perpetrators of torture, helping victims obtain redress in civilian courts, and providing evidence **to end the use of torture**.

The last twenty years have seen many successes in **the effective use of the Istanbul Protocol** as part of efforts to eliminate the use of torture. It has been used to train health professionals, lawyers, judges and human rights activists in the effective legal and clinical research and documentation of torture and other forms of ill-treatment.

But in some cases, as the authors write, "far from being tools for access to justice, they have become a tool to hide cases of abuse or torture." And **Mexico has provided a heartbreaking country case study** since the early 2000s on the many ways in which forensic professionals employed by the Attorney General's Office (PGR, now the FGR), have grotesquely breached the standards of fair practice in their affidavits regarding individuals who claim to have been tortured while in the custody of government officials.

Through their meticulous analysis, the authors not only demonstrate how a **huge percentage of victims of torture and ill-treatment in the cases they examined did not have access to a proper expert opinion**. The authors rightly believe that the experts are responsible for the expert opinions that they wrote, signed and swore in, and are calling for sanctions to be imposed on them.

OBJECTIVES AND METHODOLOGY OF THE STUDY



- Analyze the application of the Istanbul Protocol guidelines and international guidelines in a sample of medical-psychological opinion reports for cases of possible torture and / or cruel, inhuman or degrading treatment, carried out by the personnel of the PGR (current FGR) or Attorney General's Office
- Analyze the intentional nature of any errors.

This study has an empirical base and analyzes in depth 54 medical-psychological expert opinions carried out by forensic professionals of medicine and psychology assigned to the Attorney General's Office (PGR / FGR), based on a standardized analysis model

The expert opinions were obtained through independent organizations that provide legal advice or legal representation, including the Centro de Derechos Humanos Miguel Agustín Pro Juárez, and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos. The organizations consulted the victims who gave their consent for incorporating the expert opinions to this study

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It is important to indicate that the authorization for the inclusion of the expert opinions in the study does not necessarily entail a complaint against the experts who issued the opinions.

A tool for analysis was developed with 21 items of possible malpractice based on the experience of analysis among peers and the performance of expert opinions and counter-expert reports by the team.

The items correspond to **elements of technical malpractice with a malicious component** and to **elements of deontological malpractice**.

- **Technical malpractice:** These are errors in the drafting of the opinion that, due to their character or nature, could hardly be attributed solely to a lack of knowledge, inexperience or involuntary error and that have the purpose or the effect of hiding the acts of torture that are being assessed.
- **Deontological malpractice:** These are serious errors in the delivery of the opinion that contravene the Istanbul Protocol's indications on the ethical standards for the application of the protocol. Since these are minimal or sine-qua-non conditions without which it would not be acceptable to apply the protocol, carrying out the same in contravention of them carries a malicious element.

In the following analysis, a description of the poor practices identified in the sample of 54 expert opinions is made.



It can be seen in the data obtained that:

- These actions are not focused on a small group of experts, but rather on documented expert opinions in which a total of 21 individual doctors and 27 individual psychologists participated.
- The expert opinions depend for the most part on the General Directorate of Forensic Medical Specialties, dependent on the General Coordination of Expert Services of the Attorney General's Office.
- Most of the interviews are carried out inside detention centres, where, frequently, the person being assessed has been incarcerated for years awaiting sentencing

THE MOST FREQUENT PURPOSE OF THE ALLEGATIONS OF TORTURE:

59.2%

The most frequent purpose of the allegations of torture is self-incrimination for alleged cases of kidnapping or homicide

14.8%

Recognition of belonging to organized crime groups / drug trafficking and information

11.2%

Political repression. False indictment of a serious crime against human rights / environment defender

11.2%

Punitive torture / Intimidation of witnesses

RESULTS

VIOLATION OF ETHICAL STANDARDS

On the one hand, **the expert opinions were prepared by professionals who were mostly officials** of the General Coordination of Expert Services of the General Directorate of Forensic Medical Specialties that depends on the now called the FGR. One case was prepared by the Special Prosecutor's Office for Crimes of Violence against Women and Human Trafficking, a body also belonging to the FGR.

On the other hand, **in 7 of the cases it is the Attorney General's Office (PGR / FGR) itself that is accused of having committed ill-treatment or torture**, in 86 other cases it would be other institutions that torture, and in the remaining 11 cases, it is not possible to determine, from the accounts of events, which institution is responsible. The latter represents a significant percentage of cases that result not so much from the victim not identifying it, but rather that **the expert did not consider it relevant to investigate in the interview data that would allow to identify the responsible authority** and include the information. It is important to consider that in most cases an interview is not conducted, the person is only asked to write down the facts related to his or her allegations of probable torture.

In addition, it should be recalled that in most cases, **the Attorney General's Office (PGR / FGR) is accusing or has accused the victim of committing crimes and the evidence of the accusation was obtained through torture.**

Thus, none of the expert opinions analyzed can be considered independent, since there are incentives to conceal their own torture or that of other institutions so that the prosecution evidence is not declared illegal.

“ *In most cases, the Attorney General's Office (PGR / FGR) is accusing or has accused the victim of committing crimes and the evidence of the accusation would have been obtained through torture.”*

“ *None of the expert opinions analyzed can be considered independent, since there are incentives to conceal their own torture or that of other institutions so that the prosecution evidence is not declared illegal.”*

CONFIDENTIALITY

75.9%

The persons present in the assessment are not specified, in breach of the Istanbul Protocol's directives, or the presence of persons outside the expert function, such as other detainees or persons from the public prosecutor's office, is reflected.

SECURITY

7.4%

The interviews are conducted in a context in which it is plausible that there could be reprisals or punishments for the victim in reaction to his or her account of events.

CONSENT

81.6%

There is no adequate informed consent detailing the entire process.

RESULTS

CONCEALMENT MECHANISMS DERIVED FROM THE EXPERT ACTION

Including other accounts that do not correspond to that of the assessed person.

The IP must be prepared based exclusively on the analysis of the alleged victim's testimony and the physical and psychological examination. In no case should the account of people other than the assessed person be included, except in the case of direct witnesses or sources of triangulation of the immediate environment (relatives of the assessed person or others) who are interviewed blindly and independently.

29.6%

Include accounts of alleged perpetrators or other agents

Considering as proven facts that come from the account obtained under torture.

The expert includes in the report the alleged confession, the account that was obtained under torture, considering it not only acceptable but also truthful.

9.3%

Assume proven facts that come from the account obtained under torture.

Doing a credibility analysis of the assessed instead of an analysis of the credibility or consistency of the account.

In order to undermine the image or the credibility of the victim, the most frequently used method (77.8%) is to present a medical-psychological opinion report in which more emphasis is placed on the psychosocial history than on the psychological clinical examination looking for details that give a poor or denigrating image of the assessed person.

59.3%

Carry out an analysis of the credibility of the assessed person.



6 CASES 7 CASES

Use derogatory or denigrating comments towards the victim

Call the victim throughout the report by his alleged criminal nickname instead of by name

20 CASES 16 CASES

Consider tattoos or other aesthetic elements as signs of psychopathy or "amoral or antisocial personality"

Include unnecessary comments on sexual practices (age,...), non-heteronormative affective behaviors, etc. as indicators of amorality or psychopathy

42 CASES 35 CASES

Place greater emphasis on the psychosocial history including potentially humiliating elements (e.g., difficulties within the family, socialization problems...) than on psychological examination and symptom determination

Perform psychodynamic analysis of a person's "maturity" or "immaturity" or moral capacity based on life history



RESULTS

CONCEALMENT MECHANISMS RESULTING FROM EXPERT ACTION

OMITTING THE INCLUSION OF TORTURE METHODS IN THE EXPERT'S REPORT

Without this work of translating the account into methods, it is not possible to analyze the possible impacts. Moreover, the reader has the false impression that nothing happened because the facts are not technically broken down into their constituent elements. The ill-treatment is made invisible to the reader

IGNORING AND NOT EXPLORING OR REFLECTING PHYSICAL AND PSYCHOLOGICAL COMPLAINTS THAT WERE MANIFESTED IN THE ACCOUNT OF EVENTS

Very often, the account of events describes psychological symptoms (problems sleeping, symptoms of re-experimentation, symptoms of alert or avoidance, fear, social isolation...), which are then not included, not questioned or explored, nor are they reflected in the corresponding clinical apparatus; similarly with physical symptoms: earaches, headaches, muscle aches and others.

NOT ATTACHING TESTS PERFORMED

The tests supporting the diagnosis are not attached for independent contrast, the results are not shown in the corresponding part or in annexes, nor are they included in the analysis of information

MAKING MEDICAL INJURIES INVISIBLE

To this end, the medical analysis uses different strategies; on the one hand, it discredits the injuries, pointing out that they are not life-threatening wounds and that take less than 15 days to heal, and on the other hand, it indicates that they would be injuries prior to the facts when the evidence indicates otherwise.

FAILING TO INTEGRATE INFORMATION FROM PREVIOUS EXAMINATIONS WHEN IT COULD SUPPORT THE ALLEGED VICTIM'S ACCOUNT

In 35 reports, information on previous examinations by other doctors or psychologists documenting injuries, especially in the hours immediately after the arrest, is ignored and is not included in the opinion as a source of information.

ISSUING AN OPINION ON WHETHER OR NOT THERE WAS TORTURE

It is not the responsibility of the expert to give an opinion on whether or not there is a type of criminal offense. The expert must confine himself or herself to an opinion on the consistency or credibility of the allegations. He or she can indicate whether or not the findings were consistent with torture, but not whether or not there was torture. In this case, when entering into this undue analysis, it is stated in all cases that there was no torture.

87%

The section with the list of torture methods is not included

79.6%

Symptoms referred to in the account of events are not explored and / or reflected

63%

The results of the tests used are not attached

70.4%

Injuries are discredited due to their severity

64.8%

Previous exams are not included

68.5%

Affirm that the findings correspond or not to torture

RECOMMENDATIONS

- Establish an **independent mechanism for forensic assessment**, creating a forensic institute with medical and psychological disciplines, among others, that is independent from the Attorney General's Office.
- Establish an **independent investigation commission**, with international oversight that includes individuals and forensic experts from civil society who will audit a random sample of expert opinions on cases of ill-treatment or torture carried out by the Attorney General's Office (PGR / FGR) in the past 2 years.
- **Establish external and independent quality control systems** for forensic assessments of ill-treatment or torture by the Attorney General's Office (PGR / FGR.)
- Establish **systems of administrative sanctions** that include suspension of the professional license for those experts who demonstrate the performance of assessments with elements of malpractice that conceal acts of torture.
- Urge professional associations to assess cases in which there are **complaints filed by affected persons**, and to impose the penalties that may be applicable in case of intentional malpractice.
- **Urge victims to make their voices heard** in those cases in which they consider that their rights to an independent and scientifically compliant forensic assessment have been violated.
- Urge psychologists and medical professionals who are aware of these events to **report them to the pertinent authorities**, allowing the proper and impartial investigation of them.
- **Request the CNDH (Human Rights National Commission) to investigate** malpractice and non-compliance with the guidelines established in the Istanbul Protocol by the Attorney General's Office (PGR / FGR) as a violation of human rights, according to the precedent that already exists by the CDHCDMX (Human Rights Commission of Mexico City).
- Analyze the **criminal responsibility of the experts** in the investigations into torture and / or in the criminal proceedings in the cases analyzed and the consequences these have had for the victims of torture.
- Assess the **criminal sanction of health professionals** in light of the Ley General para Prevenir, Investigar y Sancionar la Tortura (General Act to Prevent, Investigate and Punish Torture).
- Ensure **training in ethical elements in the evaluation of torture** and the principles of dual loyalty for all forensic medical professionals and forensic psychologists associated with the Attorney General's Office (PGR / FGR) at the federal and state levels.

We thank the World Organization Against Torture; the Office of the United Nations High Commissioner for Human Rights, Mexico; the Grupo de Acción Comunitaria; the Centro SiR[a] for attention to victims of torture; the Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C.; the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C.; and the Red Nacional de Peritos/as y Expertos/as Independientes Contra la Tortura for their support in the preparation of this report.

This report extracts some of the most relevant data from the undertaken research that will be published in December 2020.