



Wilton Park



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Report

Implementing the Convention against Torture (CAT): sharing best practice and experience in preventing torture in police custody in the Middle East and North Africa

Sunday 13 – Tuesday 15 December 2015 | WP1426

Held in Marrakech, Morocco

In association with:





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This regional workshop provided a neutral space for candid discussion, on a non-attributable basis, about the key challenges to implementing the Convention against Torture, with a focus on eliminating torture in police detention. Hosted by the Government of Morocco, the event was convened by the Convention against Torture Initiative in partnership with Wilton Park. The meeting brought together more than 70 participants, drawn from governments in the region, and a number of key partners and experts, including members of the CTI Group of Friends.

Representatives from Middle East and North African (MENA) States included Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Qatar, Saudi Arabia, State of Palestine, Tunisia, and the United Arab Emirates. It built on a Wilton Park meeting held in March 2015 on new strategies to combat torture, in which the CTI participated. The meeting was also association with Morocco's Conseil national des droits de l'Homme (CNDH) and the Human Rights Implementation Centre of the University of Bristol.

Through frank and off the record discussion under the Wilton Park protocol, participants shared their good practices, innovative approaches, challenges and opportunities and sought ways in which to enhance future co-operation.

The expert roundtable provided a forum, on the basis of the provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to:

- Explore options for viable solutions to prevent torture in police detention;
- Exchange good practices and lessons learned in the implementation of torture-prevention policies and programmes; and
- Strengthen informal dialogue between key actors in the MENA region.

In the MENA region, all countries except two have ratified the UNCAT; while only four have ratified the Optional Protocol to the Convention against Torture (OPCAT). While there is greater awareness of the need to establish laws, policies and regulations to prevent torture in relation to police arrest and detention across the MENA region, participants acknowledged that there is much that remains to be done, in particular in advancing practical, realistic and country specific strategies that take into account different legal traditions, whilst promoting a human rights

approach.

It is clear that there are moments in which the risk of torture and other forms of ill-treatment is high: the first few hours in police custody are such moments. Without appropriate safeguards at these earliest stages of arrest and detention, the possibility of torture can go unchecked. The basic safeguards include the maintenance of proper registers, the holding of persons only in publically designated and known locations, access to a lawyer, the notification of family members of the whereabouts of persons arrested or detained and audio or video recording of interviews. These basic safeguards are easily implementable and none is financially beyond the reach of any country. They do not require large injections of money, but may require changes in some policing practices and attitudes. Particular focus was also given to the issue of interrogation (i.e. interviewing) techniques. The meeting heard of a number of challenges in the region, but also of some very good practices and recommendations. These are outlined below.

Challenges

Legislative

1. It is clear that the first step to combatting torture is to ensure that torture is defined in national law as a crime in its own right. Likewise, it is equally important that legislation provides that the use of evidence obtained by torture is not used in any proceedings.
2. It is important not to take a reductionist view and look only to the police to eradicate torture and ill-treatment, but to see the continuation of torture as a general problem in the administration of justice as a whole. For example, the high importance given to a confession in order to solve a crime, which can create incentives to torture, involves the entire judicial administration.

Political

3. There is often a lack of a clear political statement of zero tolerance of torture from the highest representatives of government.
4. The argument of 'exceptional circumstances' is frequently put forward by States, as a means to justify torture. This must be challenged, as the use of torture in itself means that States lose political and moral legitimacy, and destroys trust between citizens and the State. There is clear evidence that torture is counter-productive, including giving rise to false confessions and suppressing of information.
5. It is therefore important that the most senior members of government state publically that there is no circumstance that can override the fundamental protection of human dignity and render torture an acceptable practice.

Societal

6. Public attitudes are crucial to affecting change, which are strongly influenced by the media.
7. The media can often create pressures and perverse incentives that can lead to torture, for example in placing the police under pressure to name a suspect. They may also use police misconduct as a sort of propaganda, creating a culture of separation between the police and public. This can lead to solidarity within the police and reluctance to call out perpetrators of torture within police ranks.

8. The view that torture is a 'necessary evil' in order to keep people safe, particularly in the context of counter-terrorism operations, is commonly held and reinforced by popular culture and the media.
9. The public are often unaware of their most basic rights, such as the right to a lawyer when held in police custody or their right to notify relatives of one's whereabouts.

Cultural

10. MENA is a vast region with rich and varied political, cultural and social traditions.
11. Some participants considered there is a need to study further and discuss how Islamic values can be used to prevent torture and promote human rights. Criminal sanctions are not always in compliance with human rights in some parts of the Arab world, being justified instead on the basis of religious interpretation. There is a danger of cultural relativism being used to justify the practice of torture or to protect the perpetrators from being brought to account. Other participants felt that any perceived incompatibility between Islam and torture prevention/human rights was over-stated.
12. The existence of a 'confession culture' in policing and investigations in many MENA countries is prevalent: that is, a culture of policing in which the primary tool of criminal investigation is reliance on confessions. The absence of training and expertise in the range of crime solving techniques was seen to create systems that incentivise torture or ill-treatment in order to extract a confession.

Practical

13. In a given situation, whether torture or ill-treatment occurs in police detention can have more to do with a lack of alternative, practical responses to given situations, rather than formal standards.
14. Concern over the costs of introducing new practical responses was raised. However, many practical steps that can be taken involve little cost.

Monitoring and accountability

15. Accountability is still a major problem in the region, with a lack of independent monitoring of places of detention to check compliance with basic safeguards.
16. The number of criminal investigations and prosecutions for allegations of torture remain low in most jurisdictions. The accurate collection of statistics is also problematic, and particularly opaque where there is no explicit crime of torture in domestic law.

Ways forward

Cultivate a culture of human rights

17. Police and law enforcement officials are not separate from society but are part of it and its values. Human rights must therefore be more widely disseminated not only to those in law enforcement but the public more widely.
18. Education in schools and universities as well as public information campaigns - through for example media, social media and other formats - so that citizens know their rights were considered basic elements to prevent torture and ill-treatment during police arrest and detention.

Police as part of the community, not apart from it

19. Changing police culture requires that the police see themselves as part of the community and as serving the community, rather than apart from it. The police are there to protect society from harm. Interactions with the police, whether one is a victim,

a witness, an alleged offender or a member of the general public, need to be respectful and reassuring. The existence of torture and ill-treatment or punishment undermines public confidence in the police and in public institutions more generally.

20. It is important that human rights are not used as a 'sword' against the police but rather as a tool that allows them to do their job properly whilst protecting their own rights. For example, when police are forced to improve the quality of evidence (for example, by judges that seek proof that confessions were obtained lawfully) they become more professional. There is a need for a review of interrogation practices to reduce reliance on confessions.
21. A key step in elevating the status of policing lies in promoting the police as providing a service to society. Integral to this is in reviewing recruitment procedures to ensure that they are transparent and adequately represent the diverse communities they may serve, including in terms of ethnic background and gender.
22. Promotions policies may also need to be reviewed, so that they are not only linked to number of convictions, which can tolerate a culture in which crimes are 'solved' by any means.
23. Participants also stressed the need for public awareness and education of the rights of citizens in their interactions with the police, as a way to reinforce positive police conduct.

Invest in training

24. The 'confession culture' which provides incentives for torture is in part a symptom of a lack of professional skills amongst the police.
25. Adequate training for police and detention officers was highlighted as key to ensuring more professionalised police and prison services whilst linking responsibility to accountability.
26. Participants called for greater investment in the training of police – for example, in professional skills relating to investigation and interviewing, in scientific and technical aspects of criminal investigation, and in how human rights standards can be integrated into police practices. Participants asked for more information about existing training tools. The CTI will, in 2016-17 as part of its [new strategic plan](#), collect and disseminate existing training tools, and also share good practices, through its web portal.
27. However, human rights should not be seen nor taught as an add-on, but integrated into everyday training and policing, such that police learn how their techniques and practices can be human rights-compliant.
28. A focus on scientific and technical aspects of investigations and forensics is also important to reducing the reliance on confessions.

Be practical and technical

29. The police are in general, practical and results-orientated. By demonstrating the ineffectiveness of using torture to extract confessions, behaviour can change. Demonstrating the practical consequences of engaging in torture and ill-treatment also allows a human rights approach to be mainstreamed into police training.
30. Practical considerations such as improving the conditions of detention must be part and parcel of a State's plan to combat torture in police detention.
31. Technology can play an important role in preventing torture and protecting both detainee and law enforcement officers, for example by ensuring that police interviews are subject to audio or video recording. Audio or visual recording protects police as well as the accused, for example in allowing police to refute allegations that the confession had been obtained by torture or ill-treatment. More information on the use of body

cameras was also sought. Audio and video recording is also an important way to preserve oral evidence.

32. Investment in forensic science is important to both preventing torture and proving where it has occurred- and in downgrading the value of confessions in light of the possibility of scientific evidence.
33. Safeguards must not only encompass torture but also ill-treatment - it is difficult to torture someone when treating them well, as dehumanisation may allow an environment in which the crime of torture is committed more easily.
34. Monitoring bodies must be able to carry out independent research to provide data on torture prevalence in each country- in order to pinpoint those moments where there is a high risk of ill-treatment and work to minimise them.

Improve independence and accountability

35. Independent monitoring and investigation is critical to ensuring accountability and trust in police and law enforcement services. Independent monitoring of places of arrest and detention, as well as of police practices, is crucial in order to prevent violations, identify violations as early as possible after they happen, and seek redress for such violations. It can also have an essential role in identifying recommendations for changes in laws, policies and practices in order to bring them in line with international standards.
36. Proceedings against police and law enforcement officers are to be held in ordinary civilian courts to ensure independence and not in any special court, police or otherwise.
37. Medical doctors in detention facilities need to be independent of the detention system. In many prisons, for example, the health professionals report to the same line ministries as the other staff of the prison. This can result in doctors feeling unable to report suspected cases of torture or ill-treatment for fear of risking their career or reprisals.
38. For accused [on remand] or convicted persons being transferred to a detention facility, medical check-ups were recommended to be carried out on arrival and on every transfer between centres. The role of the doctor must be made clear to the detainee, as the role of the forensic doctor is very different to the role of the doctor that provides treatment.
39. There are some good State practices of independent bodies being set up, that are distinct from the police and that are authorized and empowered to investigate police actions. They too need to be equipped with the appropriate skills and training.

Involve the wider judicial and legal system

40. The police are not alone in their responsibility for preventing torture. The prevalence of torture and ill-treatment is reinforced and can be enhanced when the judiciary relies on evidence obtained by torture or ill-treatment, or where confessions are not properly evaluated in court proceedings as to how they were obtained. Rules of proceeding that do not allow evidence obtained by torture in any proceedings, as well as proper evaluation of how such evidence was obtained, are crucial to fight impunity and to prevent torture overall.

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This report was prepared jointly by the CTI Secretariat and Wilton Park.

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