



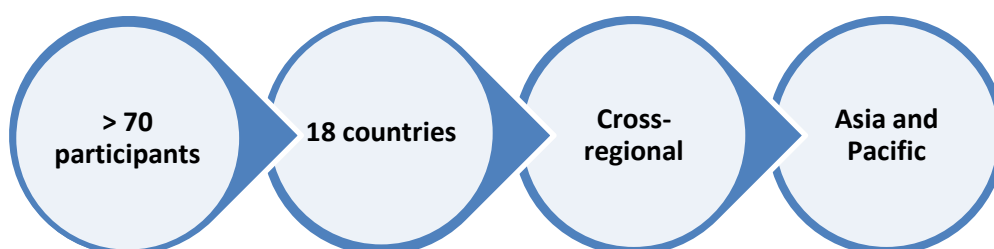
## CTI Regional Seminar

### Sharing experiences and building State capacity in South East Asia and the wider Asia-Pacific region: Strengthening institutional and legislative frameworks for effective law enforcement

26-28 November 2019 | Bali, Indonesia

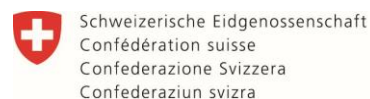
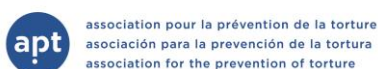
#### Background

1. On 26-28 November, the [Convention against Torture Initiative's \(CTI\)](#) regional seminar for countries from Asia and the Pacific was held in Bali, Indonesia, on ***“Sharing experiences and building State capacity in South East Asia and the wider Asia-Pacific region: Strengthening institutional and legislative frameworks for effective law enforcement”***. The Seminar was hosted by the Ministry of Foreign Affairs of the Republic of Indonesia, with additional financial support from Denmark and Switzerland, and organised in partnership with the [Association for the Prevention of Torture \(APT\)](#).
2. The Seminar was attended by over 70 participants, with representation from 18 countries in total from the Asian and Pacific regions and beyond, along with the CTI core States and CTI Friends<sup>1</sup>. Leading experts on torture prevention, policing, psychology and human rights, as well as the United Nations, also participated.



<sup>1</sup> Participating States included: Cambodia, Chile, People's Republic of China, Fiji, Ghana, Indonesia, Islamic Republic of Iran, Lao People's Democratic Republic, Malaysia, Morocco, Myanmar, Nauru, Samoa, Solomon Islands, Switzerland, Thailand, Tonga, and Viet Nam.

In partnership with:



3. Under the overall goal to strengthen international cooperation and build capacity, the objectives of the Seminar were to:
  - Share good practices and success stories, as well as challenges, in constructing effective legislative and institutional prevention frameworks;
  - Exchange on methods for the further professionalisation of the police and law enforcement, with a focus on procedural safeguards and investigative interviewing;
  - Identify concrete proposals for the way forward to further strengthen capacity of law enforcement to contribute to a culture of prevention domestically, and in the region.

## Summary observations on the main topics

### Ratifying and implementing UNCAT: Asia-Pacific experiences

4. Considerable progress has been made towards ratifying and fully implementing UNCAT in the Asia-Pacific region, and States attending the seminar shared their positive experiences and encouraged each other to take further action. In ASEAN, six out of 10 States are party to the Convention, while three additional States have publicly committed to ratifying in the near term. In the Pacific, six States are party, with six additional States taking steps to ratify. Impressively, one-third of the 15 new ratifications since CTI was launched in 2014 were from Asian and Pacific countries.<sup>2</sup>
5. These positive developments coincide with a shift of policy direction at regional and national levels from a reactive approach to incidents of torture and ill-treatment to a preventive approach embracing legislative, institutional and practical measures to minimise the risks of misconduct, deinceivise negative behaviour, and create mechanisms and bodies which respond appropriately to incidents. For South East Asian countries in particular, seeking to achieve a culture of prevention has become an important element of ASEAN, as reflected in its [Declaration on Culture of Prevention for a Peaceful, Inclusive, Resilient, Healthy and Harmonious Society of November 2017](#).
6. Participants acknowledged the importance of working towards universalisation of UNCAT by 2024. At the same time, the full implementation of UNCAT as the next objective that all States parties must face head-on. Representatives from States parties to UNCAT shared some of the benefits that have come with ratification and implementation, including:
  - Becoming a party to UNCAT and the continuous process of implementation strengthens legal systems, policy frameworks, and standards and practices for effective law enforcement.
  - States noted that international cooperation and good neighbourliness is reinforced by UNCAT, in particular through the harmonisation of rules on extradition and mutual legal assistance in relation to serious criminal cases.
  - The preparation and consultation processes for ratification can provide opportunities and a helpful framework for conducting legislative reviews and previewing gaps and relevant laws and regulations that may need updating.

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<sup>2</sup> These States are Fiji, Kiribati, Marshall Islands, Samoa and Viet Nam.

- Several States had developed training courses and manuals for law enforcement officials, and other actors, as a direct consequence of being a party to UNCAT.
  - The periodic review and dialogue with the UN Committee against Torture during which challenges and solutions can be identified and discussed, is best approached as a constructive process, and States encouraged each other to put their good experiences on the record, and to engage in good faith in the review process.
7. While not all States in the region are yet UNCAT States parties, participants repeated that the international obligation to prohibit and prevent torture was one accepted by all, and that all States can take various actions to these ends, also in advance of ratification. Many good laws, regulations, institutions and mechanisms, as well as practices across the regions, were shared (some reflected in this report), and the cross-fertilisation of ideas in the format of the seminar was widely welcomed. Participants highlighted the fact that a number of existing good practices can be replicated or adapted to each country in order to implement the Convention, while noting that no one size fits all in applying the provisions of UNCAT.
8. A number of challenges facing States and the region were shared, including those relating to threats of terrorism and violent extremism, drugs and people trafficking, poverty and inequality, and social and gender violence. A few States indicated that they face difficulties linked to financial resources, which they fear may limit their capacity to implement UNCAT fully. In this regard, CTI, and its partners, including international agencies such as OHCHR and UNODC, expressed their willingness to support States reduce the costs of implementation by providing support through capacity building, legislative assistance and other forms of technical assistance.

#### 9. **Recommendations:**

- Continue to **share experiences** of processes of ratifying and implementing UNCAT, such as through facilitated opportunities for knowledge exchange and discussion, and through tools and online information.
- Further closed-door exchanges would be enriched through **thematic discussions**, allowing for deeper engagement on a specific practical challenge or to learn about specific technical developments (see below).
- Pursue opportunities to **raise awareness** of CTI's global campaign for universal ratification and implementation of UNCAT within regional fora (e.g. ASEAN, Pacific Islands Forum).

## **Strengthening legislation and regulations: Sharing national good practices, experiences and challenges**

10. UNCAT provides an internationally-agreed basic framework supporting countries in developing domestic anti-torture legislation and institutions. States shared their experiences of conducting legislative reviews to assess domestic compliance with the Convention, and their various approaches to associated law reform.
11. Participants noted that UNCAT's provisions, being general in scope, encourage tailored domestic transposition, taking into account legal traditions and national approaches. For example, it was acknowledged that civil law countries may have different approaches compared with common law countries, the latter also benefiting from judge-made law prohibiting torture which would need to be catalogued and taken into account in reform discussions. Likewise, participants observed differences between dualist and monist States, though in both types of countries, clear legislative provisions were considered to aid implementation of UNCAT.
12. The discussions focused on two key issues:
  - i. whether to adopt a stand-alone anti-torture law, covering all relevant UNCAT requirements, or amend existing laws and regulations; and
  - ii. how best to criminalise offences of torture as required by Article 4, UNCAT.
13. In relation to (i), in order to assess which of the two options is more suitable for the State in question, a good practice is to conduct a legislative review process mapping existing laws and provisions that already provide protection against torture and ill-treatment. This process would help identify current adequate laws, as well as gaps, which may in turn encourage either stand-alone legislation or alternatively, to amend existing laws. The prohibition of torture and ill-treatment is found in a range of national laws and regulations related, *inter alia*, to criminal code and criminal procedure, evidence, extradition, immigration, policing, prison management, health, and education. Participants emphasised that there is no one size fits all, and that the approach would be guided by national priorities and approaches. It was encouraged that if amending legislation is a State's preferred approach (rather than introducing a stand-alone specific law), the State may wish to put together a booklet with all the relevant laws, so such laws would be easily accessible in one place and to signify the importance of the prohibition against torture.
14. In relation to (ii), a specific aspect of building anti-torture legal frameworks entails the obligation to define and criminalise torture when committed by public officials and others acting under their direction and supervision. It was mentioned that it can be easier for law enforcement, prosecutors and judges to take action against "torture" if there is a separate, distinct offence which is clearly defined in legislation, and this additionally helps with legal certainty. A number of good examples were shared from the region where this approach has been taken.<sup>3</sup> A specific offence of torture is also the preferred view of the UN Committee against Torture, yet they do not take a position on whether this should be stand-alone or included within existing criminal codes or other laws. Where a specific crime of torture is included in national criminal codes or

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<sup>3</sup> Australia, Maldives, Nauru, New Zealand, the Philippines and Timor-Leste have all provided for a specific offence of torture in their relevant domestic laws.

other relevant legislation, the definition in Article 1, UNCAT was considered to provide the basic elements of the offence.

15. At the same time, other countries expressed the view that multiple existing crimes in their domestic legislation already cover offences of torture and ill-treatment and that such crimes (for example, grievous bodily harm, assault, provisions relating to “hurt” or “harm”, misconduct, abuse of power, use of force provisions, etc.) satisfy the obligation to criminalise torture under Article 4, UNCAT. They mentioned that through such laws they had an ability to extensively cover the range of types of prohibited acts or omissions; and that such laws – included in multiple pieces of legislation – were well regulated. Flexibility by the UN Committee against Torture on these questions was requested.

**16. Recommendations:**

- To carry out further **research** into the **different approaches** (specific offence or multiple offences) to the criminalisation of torture in domestic laws, and compile examples from the region;
- Participants requested CTI and partners to conduct **regional technical workshops** on anti-torture legislation and assist States with advice and reform processes, drawing on a range of State practices.

**Changing mindsets for more effective policing: investigative interviewing**

17. Assisting police and law enforcement, investigators and other relevant officials with interviewing skills and methodologies is key to moving beyond historic coercive, manipulative or abusive interrogation techniques, which have been widely shown to lead to miscarriages of justice. “Investigative interviewing” is a practical methodology of obtaining accurate and reliable information from suspects, witnesses and victims, and resolving criminal cases with accuracy. A diverse number of countries in the Asia-Pacific have either adopted the practice or been engaging in training and capacity building pilot programmes (including Fiji, Indonesia, Thailand and Viet Nam), and have found very positive results. The techniques have been applied in both criminal justice and counter-terrorism contexts. Reference was made to [CTI’s Training Tool on Investigative Interviewing for Criminal Cases](#).
18. The sessions on changing mindsets and investigative interviewing explained that with the passage of time, it is harder to recover and retrieve information stored in one’s memory about particular events. It was also explained that “interferences”, such as coerced questioning, and “stressors”, such as intimidation or threats, can affect memory and can “lead” people to incorporate false information and false memories into their testimony.
19. Some key points were raised with regard to the conduct of investigative interviews:
- Where: The interview needs to be conducted in a comfortable, reserved space that is free from interruptions or distractions.
  - Who: Investigative interviews are a specialised task requiring specialised training and are to be conducted by police officers with training on the method. In this regard, some countries have put in place tiered systems,

whereby police officers are given different levels of training in accordance with their rank.

- How: Investigative interviews should follow the so-called “PEACE model”, a rapport-building, information-gathering method consisting of the following key steps: Preparation and Planning, an essential step for a successful interview, requiring evidence gathering, investigating multiple hypothesis and all other case-related preparation in order to avoid “tunnel vision” and a tendency to corroborate pre-conceived ideas; Engage and Explain, explaining the process of the interview, advising the interviewee of their rights; Account, asking the interviewee for a free, uninterrupted account of what happened using open-ended questions and using audio and video recording of the interview; Closure, closing the interview by thanking the interviewee for the time and effort; and Evaluation, assessing the information obtained with the help of the audio and video recording to see how the interviewer performed.

20. For society to respect and trust police and law enforcement agencies, they need to see that they work effectively. This is why conducting human rights-compliant interviews is key to delivering successful operational results.

#### 21. **Recommendations:**

Participants shared a few recommendations regarding a successful implementation and application of investigative interviewing:

- **Training** for the police and other law enforcement should be incorporated early in their curricula, rather than asking senior police officers to change their interviewing methods later. It should also be made available to judges, prosecutors and lawyers, so they do not rely on confessions as a primary source of evidence.
  - **Training of trainers:** A select group of police officers can become agents of change by being trainers and capacity builders on investigative interviewing within the police service.
  - Training **regularity** and providing **refresher courses** was seen as a good practice.
  - Trainings to be as **practical** as possible, allowing police officers to implement the method by conducting mock interviews.
- **International cooperation** was seen as a good way to foster inter and cross-regional exchange of experiences in applying investigative interviewing.
- Investigative interviewing requires **political will and support** from the police leadership. Creating a “marketing strategy” and mediating the successful solving of cases through investigative interviewing was suggested as a successful advocacy strategy.

- **Performance indicators** based on the number of cases solved need to be discarded, as it can lead to resorting to coercive methods and wrong convictions.
- **Regulations and procedures** dealing with the conduct of criminal investigations need to be amended to incorporate investigative interviewing. Standard Operating Procedures (SOPs) that compile the steps to follow to conduct investigative interviews can be put in place for police and other law enforcement agents to follow.
- Participants requested **training and capacity-building** on the **PEACE-model** of investigative interviewing.

### Enhancing the effectiveness of law enforcement/policing

22. Some country good practices were highlighted to enhance the effectiveness of law enforcement/policing:

- The Fijian **“first hour procedure” pilot project** – Fijian police officers agree to defer interviews with persons held in police custody until a lawyer has been contacted. The Legal Aid Commission provides lawyers within the first hour of arrest or detention. Lawyers are rostered on an on-call basis and, upon arrival to the police station, inform suspects of their rights, allowing them to make an informed decision as to whether to retain or waive their right to counsel.
- While awaiting for a draft bill on torture and enforced disappearances to be passed, Thailand created a **National Committee** for managing cases related to torture and enforced disappearances, comprising four sub-committees dealing with: investigation into allegations of torture and ill-treatment; screening cases of torture and ill-treatment; providing reparations for victims; and preventing acts of torture and ill-treatment by providing training to law enforcement officials across the country.
- Several countries expressed the introduction of **amendments into their Criminal Codes** to include procedural safeguards against torture, while others have launched a plan of action against torture and have started conducting trainings for police and other law enforcement agents on torture prevention and on investigative interviewing.
- Indonesia has adopted a **Memorandum of Understanding (MoU)** between the National Human Rights Institution (Komnas HAM) and four other institutions as well as the police to provide training of police, and they have elaborated a practical police handbook on torture prevention. Moreover, the Indonesian Police continues to provide national and regional training to increase the police’s professionalism, including anti-torture curricula as well as an investigative interviewing module. On top of such good practices, the work of the Indonesian Witness and Victim Protection Agency contributes for further prevention of torture in the country.

- Due to the need to raise awareness and understanding of the issue of the prohibition of torture and ill-treatment, the High Council for Human Rights in Islamic Republic of Iran, so far, has held various **training sessions with law enforcement officials** and authorities on various principles set forth in the Constitution and statutory law. The High Council for Human Rights continues to consider the issue of UNCAT ratification, and is going to facilitate an exchange of best practices with interested member states, including Islamic countries, regarding this Convention.
  - Use of **technology and policing** should go hand in hand – use of CCTV cameras, audio and video recording of interviews, or allowing complaints to be lodged via electronic links and social media were seen as useful in boosting the police’s capacity.
23. Some **challenges** were raised and that need to be addressed referred to difficulties around changing mindsets in law enforcement, and law enforcement’s vulnerability to collusion and corrupt practices in their daily work.

#### 24. **Recommendations:**

Participants shared a few recommendations on enhancing the effectiveness of law enforcement/policing:

- **Peer-to-peer exchanges** and/or **bilateral study visits** to learn about the experience of other countries in implementing safeguards during the first hours of custody. They are seen as a potential step to increase understanding, capacity and getting the institutional buy-in from law enforcement and government agencies for such practices to be adopted in their respective countries.
- **Sensitisation courses** on how risks of torture occur during the first hours of police custody and practical knowledge on the implementation of legal and procedural safeguards needs to be included in police training and curriculum. Complementary institutions such as National Human Rights Institutions (NHRIs) can partner with police academies to deliver such courses or training.
- The **use of technology** and **digital platforms** in policing are seen as a potential solution for professionalising the work of law enforcement. The benefits and good practices of using devices such as CCTV cameras, electronic systems that log complaints and manage case processes, and audio visual recording of police interviews should be further disseminated and implemented by law enforcement.



## **Building strong complementary institutions for the effective administration of justice**

25. National bodies and mechanisms that monitor and/or inspect places where persons are deprived of liberty can help to reveal implementation gaps and in so doing, prevent the occurrence of torture and ill-treatment. In the Asia-Pacific region, several States have put in place a range of such independent bodies mandated to inspect detention places, receive complaints and investigate allegations of torture, as well as provide advice to government on legislative reforms and treaty ratification and implementation. These include NHRIs, Ombudsman offices, prison visiting committees, National Preventive Mechanisms (NPMs) set up under the Optional Protocol to the UN Convention against Torture (OPCAT), or independent police investigation units/bodies. In addition to these, there is a promising gradual development around government and civil society cooperation in the Asian and Pacific regions. Civil society organisations can bring to bear their localised experience and expertise, and help inform government and police policies, priorities and capacities.
26. Ratification and implementation of OPCAT was indicated as a practical international prevention instrument, requiring States parties to establish or designate an NPM to visit places where persons are deprived of their liberty. Twelve States in the Asia-Pacific region have already ratified the OPCAT in order to strengthen their preventive framework against torture and ill-treatment.
27. Some good practices were highlighted to demonstrate the roles and efforts of the national institutions and civil society in enhancing the administration of justice and awareness-raising at the national level:
- In the Philippines, the national human rights institution and civil society organisations continue to set up their **national preventive mechanism (NPM)**. The “interim” NPM is comprised of NHRI, academics, physicians, prison experts, lawyers and civil society organizations. So far, the interim NPM has conducted preventive visits to police lock-ups and prisons in the greater Manila area.
  - Samoa’s Office of the Ombudsman is addressing the challenge of how members of the public may perceive human rights as a foreign concept through an **awareness program** utilising digital media. The Office has also been providing Government agencies with additional resources to assist them in building their own **complaints mechanisms** and, in the near future, the Office will be conducting workshops on this area. As a result, the number of complaints the institution received from the public naturally increased because of better access. Part of that success is due to the support of Parliament in endorsing the Office’s recommendations following their investigations.
  - For the purpose of promoting accession to UNCAT among government agencies, national stakeholders and the general Malaysian public, the National Human Rights Commission of Malaysia (SUHAKAM) launched a **campaign** called Act4Cat. The campaign convened national civil society organisations, international experts, religious organisations and visual artists to help accelerate the momentum and interest in UNCAT ratification in Malaysia.

- As an international NGO, the [Association for Prevention of Torture \(APT\)](#) has developed long term constructive cooperation with government agencies, authorities, NHRIs and CSOs in the Asian region by **building trust** with all partners, **bridging different voices and expertise** in torture prevention, as well as providing **practical and innovative solutions** that address risks and incentives leading to of torture and ill-treatment and build capacities of oversight bodies in detention monitoring.

#### 28. Recommendations:

Participants shared a few recommendations on building strong complementary institutions for the effective administrative of justice:

- States to consider **ratifying OPCAT** as an instrument for the prevention torture and ill-treatment.
- **Technical support** and **capacity building** for OPCAT States parties in establishing NPMs and their proper functioning, including through cooperation with international organisations and national or international non-governmental actors.

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