Report

The administration of justice and law enforcement: international co-operation and sharing experiences

Monday 30 – Tuesday 31 October 2017 | WP1562

Held in Fes, Morocco

In association with:

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Background

1. The Governments of Morocco and Indonesia as part of the Convention against Torture Initiative (CTI) hosted a regional seminar on 30-31 October in Fes, Morocco, in partnership with Wilton Park. The event brought together over 60 participants from Asia, Africa and the Middle East sharing similar legal frameworks and cultural traditions, in order to exchange experiences on challenges and opportunities related to ratification and/or implementation of the United Nations Convention Against Torture (UNCAT).

2. The seminar provided an opportunity to explore ways to improve the administration of justice and law enforcement practices and to discuss domestic practices, instructions and policies against the minimum international standards, effective criminal investigation and prosecution, handling of complaints, safeguards in police custody and prisons. The event was enriched by the expertise and experience of government officials, as well as representatives of international and regional organisations, national human rights institutions, non-governmental organisations and academics.

3. The opening ceremony was on the record and attended by 300 participants, including international invitees, as well as Moroccan government officials, human rights organisations and experts and a number of high-ranking diplomats. In opening the event, H.E. Mr. Mohamed Auajjar, Minister of Justice of Morocco and H.E. Mr. Mustapha Ramid, Minister of State for Human Rights, stressed Morocco's strong will and recent efforts to fight against torture within its national system. Indonesia's Ambassador Hasan Kleib added that from the perspective of Indonesia such efforts are part of an on-going process requiring active participation and contribution and reminding participants that ratification of UNCAT is not an event but a commitment to reform. Joining Morocco and Indonesia were the Minister of Justice of Sudan, H.E. Dr. Idris Ibrahim Jameel and The Gambia's Attorney-General and Minister of Justice, H.E. Mr. Abubacarr Marie Tambadou, Mr. Andrew Gilmour, Assistant Secretary General of the United Nations, and the Moroccan Conseil national des droits de l'Homme (CNDH).

4. The regional seminar provided a neutral space for candid discussion, on a non-attributable basis under the Wilton Park protocol.

5. The objectives of the seminar were to:

- Explore experiences and good practices regarding arrest and detention of suspects

- Provide an expert exchange on the latest techniques of criminal investigation such as questioning and interviewing suspects, witnesses and victims

- Share good management approaches in relation to law enforcement and custody

6. A subsequent closed meeting was held on 1 November 2017 with participating States that are not yet party to the UNCAT to discuss opportunities and challenges around ratification/accession.

Building a strong anti-torture framework

7. The regional seminar highlighted that, in order to build a strong and fair system for the administration of justice and law enforcement, an effective anti-torture framework is needed, paying particular attention to the following key aspects:

- A solid legislative and regulatory framework, including criminalisation of torture in national legislation; evidence obtained by torture to be excluded from court proceedings; and practices of arrest, custody, questioning and detention, including basic safeguards, are duly regulated;

- Political willingness through which the three branches of government – the Executive, the Legislative and the Judiciary are transparent about their roles and responsibilities, share practices and proactively cooperate with each other as a means to exercise leadership and build confidence on the absolute prohibition of torture;

- An overarching public policy sustained by good practices in relation to the development of national anti-torture strategies, professional standards of police conduct and the use of non-coercive investigative techniques;

- Training, recruitment and promotion of police, security and other government officials to be professionalised;

- Appropriate mechanisms to maintain checks and balances; and

- Providing human rights education in schools and universities to raise awareness of citizens' rights.

Procedures and safeguards on torture prevention: Good practices and challenges

8. Article 2 of the UNCAT requires States to adopt all necessary measures to prevent acts of torture and ill-treatment.[1] The meeting discussed the practical implementation of a range of safeguards to prevent torture and ill-treatment, as well as gaps and challenges. Basic safeguards include the right to prompt access to a lawyer; notification of rights and reasons of detention both orally and in writing; right to an

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[1] See, CTI Implementation Tool No. 2/2017, "Safeguards in the first hours of police detention", available here: <http://cti2024.org/content/docs/CTI-Safeguards-final%20rev.pdf>. Key safeguards reflected in this tool include: notification of rights, prompt access to a lawyer, independent medical examination, communication with a family member or third party, audio and video recording of the interrogation, model practice for investigative interviewing, judicial oversight and detention records.

independent medical examination; notification of arrest or detention to a family member or a third party; audio and video recording of interrogations; maintaining detention records; and the right to be promptly brought before a judge.

9. Some of the perceived challenges preventing these safeguards from being put in place include:

- The absence of a legal aid system, late notification of lawyers or lack of lawyer-client confidentiality;

- The lack of independence of medical staff and consequent conflict of interest in documenting evidence of torture. (staff are often employed by and/or are directly responsible to law enforcement, corrections or security agencies);

- A lack of expertise in medical forensics as related to the Istanbul Protocol - http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf- to be able to document evidence of torture;

- A "confessions-oriented" culture of police, by which a confession is seen as the primary evidence;

- Financial constraints regarding audio and video recording of interrogations;

- Exceptions to general rules, for example pursuant to counter-terrorism laws or on the basis of national security concerns; and

- A misperception that observing human rights is contradictory to keeping citizens safe.

10. Participants heard about a number of good practices emerging from States implementing safeguards:

- Providing arrested persons with access to legal aid within the first hour of police detention: Fiji, for example, has developed a "first hour procedure" in which the police have agreed standard operating procedures (SOP) with the Legal Aid Commission to provide timely and free-of-charge lawyers to those arrested. This has resulted in a reduction in the number of complaints of ill-treatment against police officers together with an increase in professionalism. It has also led to a change in attitude of police officers regarding their treatment of suspects;

- Engaging national Bar Associations to complement legal aid services in the implementation of rights of arrested persons and detainees;

- Posters displayed in police stations and places of remand and imprisonment, listing the rights of detainees, with a twofold purpose: to raise awareness and educate persons in contact with the law about their rights and to serve as a daily reminder for police officers;

- Efforts to increase the installation of CCTV cameras in all police detention facilities;

- Engaging domestic and international organisations to conduct unannounced visits to places of detention;

- Recording interviews by either audio or video, made more achievable through cheaper and easy-to-use technologies;

- Boosting judicial oversight: for example, "custody hearings" in Sao Paolo, Brazil, by which each accused is brought before a judge within 24 hours to determine whether they should be released, released on condition or remanded into custody. Results of the pilot show that an alternative to detention had been found suitable in around 50% of cases;

- Reinforcing the right to defence by paying special attention to the particular situation of vulnerable groups such as young people or disabled persons. For

instance, Morocco pointed to the creation of specially designed cells to ensure the needs of disabled persons, while Lebanon spoke of new forensic medical units within the police, giving all persons the right to a physical and psychological assessment, staffed by persons with proper medico-legal training. In order to reach remote parts of large or diversely populated countries, mobile forensic medical units could be developed; and

- The creation of a "memorandum of understanding" (MOU) between key institutions, or between, for example, the police and an external organisation providing a service. For example Lebanon's forensic unit is being carried out by a non-governmental organisation within the Ministry of Justice. These MOUs ensure that all actors know and understand their role and the limitations.

11. In order to achieve full implementation of safeguards, there should be a multi-agency approach between law enforcement agencies and the main judicial institutions.

12. Among the guidelines and tools available, specific mention was made of the following:

- CTI Implementation Tools (2017), on anti-torture strategies and action plans, safeguards in police detention, and investigative interviewing http://cti2024.org/en/cti-uncat-implementation-tools/ ;

- 2004 Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf ;

- The 2014 UNODC Handbook on "Early access to legal aid in criminal justice processes" http://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf ;

- The 2014 African Commission on Human and Peoples' Rights so-called "Luanda Guidelines", on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa http://www.achpr.org/files/instruments/guidelines_arrest_detention/guidelines_on_arrest_police_custody_detention.pdf ; and

- The 2016 UN Human Rights Council Resolution 31/31 on "Safeguards to prevent torture during policy custody and pre-trial detention" http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.26/Rev.1

Investigating crime without coercion or abuse

13. Participants discussed the importance of questioning suspects, witnesses and victims in a humane way. For example, "investigative interviewing", uses investigative techniques that are free from coercion and based on building rapport with the suspect in order to obtain information that is both accurate and reliable.

14. The benefits of using the "PEACE" (Preparation and Planning, Engage and Explain, Account, Closure and Evaluate) model, first introduced in Britain in 1992 to respond to number of forced confessions and wrongful convictions, were highlighted as an example of good practice, paying particular attention to the following:

- Planning and preparing for the interview, which involves obtaining as much evidence and information as possible on the case under investigation as well as identifying any additional information needed to be obtained through the interview;

- Building rapport with the suspect, by approaching the conversation with flexibility, open-mindedness and asking open, not leading, questions. The interviewer should start by informing the suspect of his or her rights and making sure s/he understands them. The interview should also be audio- or video-recorded, allowing the interviewer to focus on rapport-building skills rather than writing down everything that is being said. This also ensures an accurate record

of the interview for later use in court;

- Listening skills and emotional intelligence on the part of the interviewer, so that the suspect feels comfortable to provide his or her side of the story without interruption or coercion. There should also be time for the interviewer to ask follow-up questions, obtain further explanatory detail or clarification, or disclose evidence already in possession of the police; and

- The use of manuals and checklists to support the interview process and to save time, especially in time-sensitive cases.

15. The "ticking bomb scenario" creates additional pressure on the interview, particularly where there are high stakes regarding public safety. . However, research shows that rapport building interview techniques are more effective in eliciting reliable information. This applies in time-sensitive situations, including child abduction and imminent threats of terrorism. Experts argue that one of the main advantages of the PEACE method is that it enables interviewers to work fast, relying on pre-established ground rules, without having to compromise the method. There is also a high degree of trust in its reliability, compared to the documented unreliability when torture is used to extract information. The PEACE model was introduced as a result of a number of 'unsafe' terrorist-related convictions brought to public attention.

16. Participating States also highlighted the importance of complementary procedures to reduce the incentives of using non-humane interrogation. For example, the creation of detailed "rules of evidence" preventing the submission of torture-extracted evidence, as well as appropriate rules of procedure for judges, prosecutors and lawyers on how the admissibility of such evidence is assessed.

17. A universal set of standards on non-coercive interviewing methods could be developed to serve as a reference for good practice. These standards could assist in guiding States at the national level. [2] A number of States expressed interest in learning more about effective interview procedures and techniques.

Professionalising the police

18. A session was dedicated to ways in which professional standards of the police can be improved and reinforced, resulting in a number of recommendations:

- Establish clear command and control structures through which leadership should set exemplary behaviour and embody respect for human rights. For instance, prompt responses to incidents of abuse could prevent them from becoming entrenched customs or practices. Complainants should also be treated with respect and in line with appropriate protocols;

- Police and other government authorities should be representative of the people they serve, including ethnic and gender diversity;

- Good salaries and benefits would serve to reduce corruption. There should also be appropriate working conditions, and stress counselling services available if use of force or firearms are involved;

- National codes of conduct and policing standards should provide clear rules, for example, on the use of force and firearms so that they are known both to the

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[2] The proposal for a universal set of guidelines on investigative interviewing was made by the former UN Special Rapporteur on Torture Mr. Juan Mendez, in his final report to the UN General Assembly, available here: <http://ap.ohchr.org/documents/dpage_e.aspx?si=A/71/298>

police and the general public. National codes of conduct for police officers should be brought into line with UN standards.[3] In addition, there should be standard operating procedures on lockup management;

- The creation of new integrity and compliance departments and committees within the police force to oversee such matters; and

- Ensuring regular review of standards and practices (as per Article 11, UNCAT).

19. Particular emphasis was given to training and capacities building, as required by Article 10, UNCAT. The need for regular training and assessment of learning to be linked to position, responsibility and tasks, as well as promotion, was highlighted. Efforts should be taken to institutionalise the impact of the training, particularly external courses, by providing structural ways in which those benefiting from the training can "report back" and share their new knowledge and skills with their peers. In some countries, training is viewed as a reward given to the "best" police officers; whereas they may not always be the most suitable candidates. To combat this, training should be disseminated across police departments and stations through a rotation system allowing all staff members to advance their skillsets. Streamlining human rights principles and standards into the curricula of police academies, rather than as stand-alone training, would also be beneficial.

20. There was general agreement among participating States that torture and other abuses of power persist when security and law enforcement agencies act within a permissive environment. One of the major political stumbling blocks to adopting human rights-friendly policing practices is the misconception among some that human rights compromises security. It was strongly emphasised that human rights and security are mutually reinforcing concerns of States, and that there is no contradiction between security and torture-prevention. In fact the reverse is often true: in some countries poor treatment of citizens by police and security forces only heightened distrust of the authorities, led to under-reporting of crime and terrorism, and created a culture in which people avoided contact with the authorities, reducing the ability to provide appropriate control and safety.

Maintaining checks and balances

21. A system of "checks and balances" is another important feature of anti-torture frameworks and strategies, and further advances good governance and the rule of law.

22. A number of States shared their positive experiences with independent bodies that have the authority to monitor places where people are deprived of their liberty, without prior approval. Some had been designated or set up pursuant to the Optional Protocol to the Convention against Torture. It was suggested that such bodies need to cooperate with relevant authorities without being politically affiliated with them. This requires political will and commitment, based on strengthening accountability of law enforcement agencies as well as reassurance to the public. Independence requires unfettered access to places of detention and persons deprived of their liberty and documents, therefore monitoring or oversight bodies need to maintain confidential communication with people deprived of their liberty, ensuring that they are free from any fear of reprisal.

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[3] The two most relevant standards at the UN level are: the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979, available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available here: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>.

23. Impartial investigation of allegations of torture and ill-treatment are another key feature. The United Kingdom Independent Police Complaints Commission (IPCC) conducts independent investigations into deaths and serious injuries in custody even if no complaint has been brought. The IPCC's "Learning the Lessons" bulletins, outlines gaps and mistakes identified as part of the appeals and investigations work. It also works jointly with the police force to produce standards and good practice guidance. Complaints mechanisms need to be widely accessible to encourage reports of abuse. Particular attention should be paid to the availability of interpreters as well as addressing the specific needs of vulnerable groups (e.g. persons with disabilities).

24. Constructive dialogue and cooperation between relevant bodies and authorities can instil a new mindset that allows for a change in culture and behaviour. Such dialogue needs to be parallel to a political discourse that is favourable to preventing torture and rejecting any abuse of power, and which can, in turn, influence positively on the behaviours of law enforcement and security officers. National human rights institutions are influential players, for example, monitoring standards during arrest and detention, adopting recommendations, recording complaints, and providing steps for the implementation of good practices.

25. The courts, media and civil society also play an important role in reinforcing the no-tolerance message regarding torture or abusive interviewing and investigative practices.

Enhancing international cooperation: ways forward

26. There was general agreement on the following practical proposals and recommendations for an enhanced international cooperation among participating States:

- Building institutional capacity and providing on-going training on torture prevention to political leadership and law enforcement and/or security officers was seen as essential. Reforms cannot be made in the absence of political will. The ethos of the Fes seminar was recommended: rather than setting out rules on what is allowed and what is not, it is more effective to discuss and demonstrate the benefits of doing things differently;

- Peer-to-peer regional exchanges provide an opportunity to initiate discussions on torture prevention measures as well as to provide technical assistance among countries in the region; and

- There should be more emphasis on regional and international co-operation regarding the exchange of good practices and the provision of capacity-building support.

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