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# **DIGNITY'S STATE DIALOGUE PROGRAMME TO PREVENT TORTURE:**

**OVERVIEW AND ANALYSIS OF IMPLEMENTATION  
IN JORDAN AND TUNISIA 2008-2019**

Elna Søndergaard and Jo-Anne Prud'homme

DIGNITY PUBLICATION SERIES ON TORTURE AND ORGANISED VIOLENCE

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**REVIEW**

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*If the negative conclusion is that torture will persist where preventive mechanisms are absent, we can offer a positive affirmation that torture prevention does work. Both the case studies and quantitative analysis tell us that the risks of torture fall substantially when preventive mechanisms are in place, especially when proper detention safeguards are practiced.<sup>1</sup>*

### List of Abbreviations

|        |   |
|--------|---|
| CIDT   | Cruel, Inhuman or Degrading Treatment or Punishment   |
| CO     | Concluding Observations   |
| CPC    | Criminal Procedure Code   |
| CSO    | Civil Society Organisation  |
| CTI    | Convention against Torture Initiative   |
| DAPP   | Danish-Arab Partnership Programme   |
| HRBA   | Human Rights Based Approach   |
| IBAHRI | International Bar Association Human Rights Institute  |
| IFH    | Institute for Family Health   |
| ISM    | Institut Supérieure de la Magistrature  |
| IVD    | Instance Verité et Dignité  |
| JOCAT  | Jordanian Coalition Against Torture   |
| KAP    | Knowledge, attitude, and practice   |
| M&E    | Monitoring and Evaluation   |
| MENA   | Middle East and Northern Africa   |
| MFA    | Ministry of Foreign Affairs   |
| MoJ    | Ministry of Justice   |
| MoU    | Memorandum of Understanding   |
| NGO    | Non-governmental organisation   |
| OPCAT  | Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| PSD    | Public Security Directorate   |
| SD     | State Dialogue  |
| SDG    | Sustainable Development Goals   |
| ToC    | Theory of Change  |
| ToT    | Training of Trainers  |
| UN     | United Nations  |
| UNCAT  | United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment           |
| UPR    | Universal Periodic Review   |

### Figures

Figure 1 Overview of key aspects of DIGNITY State Dialogue Theory of Change

<sup>1</sup> R Carver and L Handley (2016) Does Torture Prevention Work?

# CONTENTS

|  |           |
|--|-----------|
| <b>EXECUTIVE SUMMARY</b>   | <b>8</b>  |
| <b>1. INTRODUCTION</b>   | <b>9</b>  |
| 1.1 BACKGROUND   | 11        |
| 1.2 METHODOLOGY  | 11        |
| <b>2. PREVENTION OF TORTURE: MODELS AND THEORIES</b>                         | <b>13</b> |
| 2.1 HUMAN RIGHTS-BASED APPROACH  | 13        |
| 2.2 APPROACHES TO TORTURE PREVENTION   | 14        |
| <b>3. DIGNITY'S PROGRAMME STRATEGY</b>                                       | <b>16</b> |
| 3.1 DENMARK'S DEVELOPMENT STRATEGY IN MENA                                   | 16        |
| 3.2 FREEDOM FROM TORTURE: A PRIORITY OF DEVELOPMENT                          | 17        |
| 3.3 IMPLEMENTING HRBA: DUTY-BEARERS AND RIGHTS-HOLDERS                       | 18        |
| <b>4. THEORY OF CHANGE</b>   | <b>20</b> |
| 4.1 THEORY OF CHANGE   | 20        |
| 4.2 PROGRAMME OBJECTIVES: PROCESS AND OUTCOMES                               | 21        |
| <b>5. METHODOLOGIES</b>  | <b>24</b> |
| 5.1 PEER TO PEER DIALOGUE WITH DANISH EXPERTS                                | 24        |
| 5.2 SOUTH-SOUTH AND NORTH-SOUTH DIALOGUE                                     | 25        |
| 5.3 SECTORIAL APPROACH   | 26        |
| 5.4 COOPERATION WITH MULTINATIONAL ORGANISATIONS                             | 27        |
| 5.5 MONITORING AND EVALUATION  | 28        |
| <b>6. KEY OUTCOMES (PROCESS AND END RESULTS) AND CHALLENGES</b>              | <b>30</b> |
| 6.1 PARTNERSHIPS   | 30        |
| 6.2 POLICY REFORMS   | 32        |
| 6.3 LEGISLATIVE REFORMS  | 33        |
| 6.4 CHANGE OF ATTITUDES AND PRACTICES  | 35        |
| 6.5 INSTITUTIONALISATION   | 38        |
| <b>7. CONCLUSIONS AND RECOMMENDATIONS</b>                                    | <b>39</b> |
| FIGURE 1: OVERVIEW OF KEY ASPECTS OF DIGNITY STATE DIALOGUE THEORY OF CHANGE | 41        |
| <b>8. BIBLIOGRAPHY</b>   | <b>42</b> |
| 8.1 FURTHER READINGS   | 43        |

## EXECUTIVE SUMMARY

This review outlines the lessons learned from DIGNITY's programme to prevent torture in Jordan and Tunisia which was organised as sector-specific development programmes targeting the criminal justice sector in each country. Work started in Jordan in 2008 and in Tunisia in 2012 and is ongoing in both countries.

The criminal justice sector is key to any human rights protection and in particular for the protection against torture. It is a pivot in the state actors' ability to effectively and adequately implement the obligations arising from the ratification of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and other conventions.

Guided by the Human Rights-Based Approach (HRBA) and existing approaches to torture prevention in the Global South, which provide evidence on how to design development programmes, this paper illustrates how DIGNITY's dual approach with support to state (duty bearer) and non-state actors (rights holders) in the criminal justice sector creates conditions for change in attitudes and practices and for sustainable institutional change leading towards the prevention of torture.

The key outcomes relate to the adoption of a prevention rather than a prosecution strategy and to embedding UNCAT standards in national legislation and institutional practices in the criminal justice sector. This is achieved by building trust-based partnerships, as indispensable for any development outcome, as well as new relations and dialogues between key actors about how to respect the obligation to prohibit and prevent torture. It is our experience that, despite obvious contextual challenges and the complexity and sensitivity of the topic, it is possible to create positive conditions and facilitate lasting and meaningful results in the criminal justice sector that will serve to prevent torture in the long run.

## 1. INTRODUCTION

In this review, we<sup>2</sup> describe how DIGNITY – Danish Institute Against Torture (DIGNITY) has worked with development and human rights programmes with the objective to prevent torture and cruel, inhuman and degrading treatment (CIDT) in the Middle Eastern and North African countries of Jordan and Tunisia.

Based on detailed accounts of our work in these two countries, including descriptions of the programmatic approach, the modalities of engagement and the mechanisms that have been leveraged for achieving change, this paper will explore the key lessons learned from our work. We do this for the purpose of making these lessons available for other development and human rights actors globally, so as to achieve the overall vision of DIGNITY, that is, a world where fewer people are exposed to torture.

Specifically, the review explores the contributions of DIGNITY's State Dialogue Programme (SD-Programme) towards creating conditions and achieving the changes that make this vision realistic and attainable. Our particular focus is on countries with some, albeit unstable, forms of democratic governance, as well as with some formal legal bureaucracies although these do not always meet the full requirements of rule of law. This way, the text aspires to contribute to the shared understanding of how justice sector programmes are implemented in such settings and what the key risks towards achieving the planned outcomes are. Thus, we hope to contribute from a praxis perspective to the broader discussions regarding the impact of torture prevention interventions as they have developed over the last decade.<sup>3</sup>

In general, justice sector programmes focused on prevention of torture face two key challenges, challenges we also will refer to as risks. Both of these are well-known and will be addressed throughout this paper. First, the complexities at multiple scales of the political, legal, and institutional context in which such programmes are implemented. Secondly, the political and social sensitivity of the anti-torture agenda in itself. These two risks frame all aspects of DIGNITY's programmes and one key observation we take from this work is that both are present and should therefore be addressed throughout the implementation of such programmes. Hence, mitigating these risks obviously influence many, if not all aspects of the work, from the overall design of programmes to the specific modalities of intervention with particular groups of people. Programmers must continuously update implementation plans based on emergent understandings of the justice sector and its operators, and they must continuously adjust program strategy to the changing political and social context and sensibilities of the state and non-state actors with whom they work. Nudging state and non-state actors to work on social change together is a delicate process.

2 The authors of this paper are both senior legal advisors in DIGNITY's legal department. Eina Søndergaard is admitted to the Danish Bar and has a Master-degree in law. She was the country director in Jordan from 2013-2015 and has continued to be the legal advisor on the Jordan programme. Jo-Anne Prud'Homme has a degree in human rights law and is now the country director in Tunisia. Previously, she was the manager of the SD-Programme 2016-2019 and responsible for establishing and implementing the SD-Programme in Tunisia since 2011.

3 See Carver and Handley, D. Celermejer, The Prevention of Torture – An Ecological Approach (2018); Wilton Park, Report: Strategies for tackling torture and improving prevention (2015) and D. Rejali, Torture and Democracy (2009).

But certain parameters in programming are a given. States which have ratified the UNCAT, are obliged to implement the obligations of the Convention and submit themselves to periodic reviews of the UN Committee against Torture. Such reviews lead to Concluding Observations (COs), which subsequently are to be considered and implemented by the State party through its specifically mandated authorities. The overall objective of DIGNITY's justice sector programmes is to assist states, in collaboration with civil society, to comply with the obligations under the UNCAT. A similar approach is used when states have ratified the Optional Protocol to the Convention Against Torture (OPCAT).

Currently, we can identify at least two waves or generations in torture prevention work that have sought to achieve the implementation of UNCAT in practice. The first generation of programmes sought to build watchdog or monitoring capacity in civil society organisations (CSOs), with the overall objective of seeking state compliance by adding to national and international political pressure through advocacy and documentation of torture cases. The overall theory of change (ToC) was fairly simple. By building the capacity of national civil society in monitoring and documenting practices of torture, pressure was brought to bear on state institutions. Hence state parties to the UNCAT would eventually, as national, and international pressure mounted, cease to practice torture, and become compliant with the UNCAT. This strategy has typically been called the name-and-shame strategy and it remains the only viable option in contexts where state institutions appear unwilling or unable to engage in long term programmes that address practices of torture.

However, we argue that the programmes under scrutiny in this paper mark a step forward from this strategy and would aptly therefore be referred to as second generation programmes.

Second generation programmes have a stronger focus on working with the state from a development perspective than was seen under the first-generation programmes. These second-generation programmes seek to create partnerships with state institutions in the criminal justice sector, in addition to the CSO-partnerships, through a process we refer to as co-ownership. Since these institutions are the key duty bearers under UNCAT, they need to assume ownership of the changes if the process is to create sustainable social and institutional change. Such co-ownership may manifest itself in multiple ways, including by institutional management committing to policy reforms and furthering amendments to legislation to bring it into compliance with UNCAT, or by professionals in the justice sector working for changes in attitudes or practices (identified as change agents<sup>4</sup>) regarding redressing acts of torture. It may also entail opening up institutions for training in new knowledge that may affect the individual and group behaviour of staff and other operators in the criminal justice sector.

It is from this perspective that this review examines DIGNITY's SD-Programmes to Prevent Torture, as these were implemented in close partnership with key stakeholders in the Jordanian and Tunisian criminal justice sectors.

4 In the Monitoring and Evaluation (M&E) system "Outcome harvesting", a change agent is an individual or organisation that influences an outcome.

## 1.1 BACKGROUND

Since the Arab Spring in 2011 the governments of Jordan and Tunisia have engaged with the UN and other national and international bodies and organisations in order to improve their human rights situation and for most of this period DIGNITY has supported these aspirations.

As early as 2008, DIGNITY began its state dialogue engagement in Jordan upon request from local CSOs, MIZAN for Law, the leading, national non-governmental organisation (NGO) in the field of torture prevention in Jordan, which suggested to DIGNITY to engage ordinary criminal justice institutions in the torture prevention programme (KARAMA).<sup>5</sup> At the outset, partnerships therefore included the Ministry of Justice (MoJ), the Chief Prosecution Office, and the Public Security Directorate (PSD) (as the key duty bearers), along with the National Centre for Human Rights -- the Jordanian NHRI -- and MIZAN as representing rights-holders. The PSD decided in subsequent phases to leave the programme as a direct partner but to maintain the dialogue with DIGNITY and local partners and to participate in activities. The KARAMA programme has passed through five phases: I: 2008-2010; II: 2010-2013; III: 2014 -- 2017; IV: 2018-2019; V: 2019-2020. Since 2013, the KARAMA programme has been managed by DIGNITY's country office in Amman.

Following the Tunisian revolution in 2011 and with the establishment of the Danish Arab Partnership Programme<sup>6</sup> (DAPP) an opportunity arose which in light of DIGNITY's previous experience with the KARAMA programme in Jordan, gave the organisation a 'template' for how to seek collaborations with state institutions. Subsequently, DIGNITY became the first non-Tunisian CSO to sign a Memorandum of Understanding (MoU) with the Tunisian MoJ. This MoU envisages a programme modelled on the Jordanian one and since 2014 this has been implemented in three different phases as DIGNITY's SD-programme in Tunisia, strongly supported by DIGNITY's country office which opened in 2012.

## 1.2 METHODOLOGY

This review bases its findings on a review of the current literature about the prevention of torture and the HRBA to development, as well as on ToC and Monitoring and Evaluation (M&E) in the form of Outcome Harvesting.

The contextual understanding is based on literature and reports (limited to English-language text) identified after a full-text search of databases (HeinOnline, UNODS and DIGNITY's Catalogue<sup>7</sup>). This includes alternative reports and national reports to UN

5 KARAMA means dignity in Arabic. The KARAMA programme focuses on the ordinary criminal system leaving out the security and the administrative justice sector.

6 The Danish-Arab Partnership Programme is Denmark's collaboration program with the Middle East and North Africa. Currently, DIGNITY's programmes in Jordan and Tunisia form part of DIGNITY's contribution to the Human Rights and Dialogue Consortium (HRDC), one of four consortia under DAPP, which is implemented together with four other Danish organisations, under the lead of DIGNITY. See further about DAPP and the Danish Human Rights Consortium at [www.dapp.dk/en](http://www.dapp.dk/en)

7 Available here <https://dignity.dk/dignity-kataloget/>

Human Rights treaty bodies and the Universal Periodic Review-system (UPR), COs from the UN Committee against Torture and the Human Rights Committee; reports from international NGOs (e.g. Human Rights Watch and REDRESS); and reports from national human rights institutions (e.g. Annual Report from the Jordanian National Center for Human Rights).

Documentation has also been provided by DIGNITY's partners in the two countries as well as its country offices, and by the external evaluations of the SD-Programme (see Chapter 5).

Finally, the findings about key outcomes (Chapter 6) and the recommendations are based on the authors' observations during numerous missions to Jordan and Tunisia in the period 2011 – 2019, as documented in mission reports (on file with authors) and in DIGNITY's Outcome Harvesting System.

## 2. PREVENTION OF TORTURE: MODELS AND THEORIES

This chapter introduces HRBA and the legal safeguards approach that in practice have proved to contribute to the prevention of torture. This includes a discussion of which of the intervention models has been most effective in terms of yielding results. DIGNITY's SD-Programmes have amongst others been designed in the light of these theoretical considerations.

### 2.1 HUMAN RIGHTS-BASED APPROACH

Today, HRBA forms a core policy principle of several major development donors, including DANIDA (Denmark's development cooperation under the Ministry of Foreign Affairs (MFA)) and the European Commission.

HRBA has been defined as:

A conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.<sup>8</sup>

HRBA seeks to anchor development initiatives within the framework of international human rights obligations to ensure that human rights standards define the benchmarks for development goals and outcomes and that human rights principles govern the development process.

By definition, HRBA is both a process and a goal. In other words, the implementation of human rights standards and norms is not only an end goal of development, but part of the development process itself. DANIDA has described HRBA as "both a means and an end in our development cooperation."<sup>9</sup>

Using HRBA for the reform of the criminal justice sector entails linking the sector to the state's obligations under international human rights law and identifying rights-holders and their entitlements (e.g., the right not to be tortured) and the duty bearers and their obligations to respect, protect and fulfil those rights.

In its essence, HRBA focuses on enabling rights-holders to claim their human rights and capacitating duty-bearers to fulfil their obligations and to prioritise the understanding of the relationship between the rights-holders and the duty-bearers, as well as their dialogue about how to ensure respect of the rights.

8 Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation. Office of the United Nations High Commissioner for Human Rights (OHCHR) (2006), p. 15.

9 Danish MFA, *The Right to A Better Life: Strategy for Denmark's Development Cooperation*, (2012), p. 33.

**Rights-holders** are every individual who is entitled to human rights without distinction based on race, colour, sex, age, language, religion, political or other opinion, national or social origin, disability, property, birth, or other status, such as sexual orientation and marriage status.

**Duty-bearers** are primarily state institutions. These include all the organs of the state, such as parliament, ministries, local authorities, prosecutors, judges and justice authorities, and the police, among others. All these are duty-bearers who, under international law, are responsible for respecting, protecting, and fulfilling human rights obligations.

HRBA includes the following five core principles<sup>10</sup>:

- Application of the human rights legal framework
- Empowerment and transparency
- Participation
- Non-discrimination
- Accountability

HRBA emphasizes participation of all relevant stakeholders in society and by building on non-discrimination, it seeks to empower excluded and vulnerable groups in the process of ensuring improvements in rights protection.

## 2.2 APPROACHES TO TORTURE PREVENTION

Research has proved that a country's signing and ratification of the UNCAT does not in itself lead to better practice with regard to the prohibition and prevention of torture.<sup>11</sup> The various models for intervention under the SD-Programmes therefore build on the assumption that there is a gap between theory (international and/or national legal obligations) and practice, and each of the models addresses this gap. There is also a recognition that interventions aimed at increasing *accountability* for torture (after the fact) may face more significant hurdles in terms of impact and effectiveness than those focused more concretely on *preventing* torture before it takes place.

Recent research has proved that programmes supporting *prevention* measures do work<sup>12</sup> and identified the following four central and interlinked approaches for preventive work:

- National and international monitoring of places of detention.

- Criminalisation, investigation, and prosecution of alleged perpetrators of torture.
- Legal Safeguards: Access to a lawyer, doctor and right to inform a family member of arrest when practiced in the first hours and days after arrest and during detention.
- Access to justice and complaint mechanisms.<sup>13</sup>

It is worth noting that these four approaches should be understood broadly as encompassing various sub-models. By way of example, the third approach regarding detention safeguards also includes means to reduce the use and length of pre-trial detention.

Researchers Richard Carver and Lisa Handley undertook research in 16 countries in order to analyse whether and to what extent the four approaches contribute to the prevention of torture and which model had the greatest impact. The focus was on “identifying practical effects on a relatively limited range of obligations related to the prevention of torture”.<sup>14</sup>

Their first conclusion was that “what matters is not laws on the statute book but practice in the police station.”<sup>15</sup> This finding does not come as a surprise for practitioners and confirms what DIGNITY has experienced in Jordan and Tunisia.

Secondly, Carver and Handley concluded that the four models mentioned above all may have a certain impact on torture practices in a country, but the model related to legal safeguards is the most effective for the prevention of torture.<sup>16</sup>

Thirdly, Carver and Handley concluded that “context matters”<sup>17</sup> and that preventive measures should be adapted to the specific circumstances in a country. This conclusion is confirmed by our experiences in Jordan and Tunisia, as we are often reminded about the impact of non-legal factors on our programmes, such as social and political realities in the countries where we work.

Our experience combined with the findings of Carver and Handley have led us to the same conclusion about the importance of legal safeguards for suspects and others in detention in the initial hours or days after arrest. All the analyses that we have conducted show that ensuring the effective implementation of these guarantees and limiting incommunicado detention in practice will significantly reduce torture. We have also found that investigating and prosecuting torturers, and independent monitoring of detention centres and prisons, make important contributions to preventing torture.<sup>18</sup>

13 lb. p. 34.

14 Carver and Handley, p. 12.

15 lb. p. 11.

16 lb. p. 99.

17 lb. p. 627.

18 Carver and Handley, p. 628.

10 DANIDA, A Human Rights-Based Approach to Denmark's Development Cooperation – Guidance and Inspiration for Policy Dialogue and Program, (2013), retrieved from <https://amg.um.dk/en/archive/hrba-guidance-and-screening-note/>

11 Carver and Handley, p. 2.

12 lb. pp. 1-11.

### 3. DIGNITY'S PROGRAMME STRATEGY

This chapter explains Denmark's development strategy<sup>19</sup> in the Middle East and Northern Africa (MENA) which is a foundation for DIGNITY's programme strategy, as well as the Danish MFA strong role in the fight against torture that has resulted in the establishment of a strategic partnership with DIGNITY (section 3.2 – 3.3). Secondly, the chapter discusses how DIGNITY's SD-Programme was designed and tailored in accordance with HRBA and to a specific context in which the assessment of criminal justice institutions and choice of local partner(s) were crucial for the implementation of the programme (section 3.4).

#### 3.1 DENMARK'S DEVELOPMENT STRATEGY IN MENA

Denmark's overall development strategy is anchored around HRBA and set within the UN Sustainable Development Goals (SDGs) and the norms and standards enshrined in UN human rights treaties.<sup>20</sup> Specifically with regards to development towards freedom from torture, the relevant SDGs would be SDG 16 promoting peace, justice and strong institutions with specific targets related to reducing all forms of violence (target 16.1), end torture of children (target 16.2), promote the rule of law at the national level and ensure equal access to justice for all (target 16.3), and develop effective, accountable and transparent institutions at all levels (target 16.6), as well as SDG 17 related to partnerships, including between governments and civil society.

Denmark has four strategic aims for its development policy, including to “invest in activities that promote human rights, democracy, rule of law and gender equality”.<sup>21</sup> Partnerships will continue to be a central feature of Danish development engagements, and the importance of involving Danish actors has been underlined in the current strategy.<sup>22</sup>

Since 2003 the DAPP, which is a central pillar in Danish foreign policy in relation to the MENA-region and which funds DIGNITY's SD-Programme, has supported processes of political reform and democratisation while enhancing dialogue between Denmark and the Arab world. Due to its flexible and multidimensional approach, the DAPP has been instrumental in supporting dynamics of political reform throughout the region, where numerous local DAPP-partners have been and continue to be central players in ongoing processes of reform. The current phase of the DAPP programme, which runs from 2017 – 2022, builds on the best elements of previous phases, particularly collaboration with local partners.<sup>23</sup>

19 Danish MFA, Strategy: The World 2030, available at <http://amg.um.dk/en/policies-and-strategies/strategy-for-danish-development-cooperation>. More specific approaches to for example criminal justice reforms have also been formulated, see MFA - Justice Sector Reform (2010), available at <file:///C:/Users/es/Downloads/Justice%20Sector%20Reform%20final%20print.pdf>

20 See note 19.

21 *ib. p. 6.*

22 *ib. p. 12.*

23 DAPP Strategy 2017 – 2022, executive summary, available at <https://um.dk/en/danida-en/countries%20and%20regions/countries-regions/middleeast/>

#### 3.2 FREEDOM FROM TORTURE: A PRIORITY OF DEVELOPMENT

For decades, Denmark has been at the forefront of the global struggle against torture, and freedom from torture has been a key feature in Danish foreign policy initiatives for many years. Denmark does not have an explicit strategy, but as noted by external evaluators “Denmark has a clear strategic approach that is recognizable to other national and international actors (...). It is clear that Denmark's approach is holistic and firmly based on the international anti-torture framework and infrastructure.”<sup>24</sup>

This is evidenced by Denmark's leading role at the UN in promoting anti-torture standards, for example through the tabling of the General Assembly and Human Rights Council resolutions on the prevention and prohibition of torture. Since the 1990s Denmark has sponsored the omnibus resolution on torture in the UN General Assembly and a thematic resolution on torture in the Human Rights Council.<sup>25</sup>

Denmark has also used the UPR mechanism to promote implementation of anti-torture standards and to raise concerns about the lack of implementation of standards in specific countries. Moreover, Denmark is also a founding member of the global Convention against Torture Initiative (CTI) together with Chile, Ghana, Morocco, and the Philippines, which seeks universal ratification of the UNCAT and enhanced implementation of the obligations it enshrines.<sup>26</sup>

Finally, Denmark has supported efforts to combat torture through financial support to Danish and international NGOs. The Danish MFA's strategic partnership with DIGNITY has paved the way for long-term and close partnerships around the world, including in Jordan and Tunisia. To the benefit of the programme implementation and in order to feed into Denmark's overall policy focus on the fight against torture, DIGNITY has maintained a close dialogue with Danish MFA's advisors in the two countries, as well as the Danish Embassies in Lebanon and Morocco, covering Jordan and Tunisia respectively.

The Danish MFAs approach to anti-torture engagements can be summed up in the following way: “consistent international leadership, predictability and principles, partnerships, platforms for dialogue, bridge building and allocation of resources.”<sup>27</sup>

It is evident from our experience in Jordan and Tunisia that Denmark – being a small country without hidden agendas – and DIGNITY, as supported by Denmark's overall development engagement, are perceived by local and national partners as credible actors in the anti-torture movement. The Danish approach to development in this area is seen as going hand-in-hand with local expectations about ownership and long-term goals.

24 Evaluation of Danish Support to Promotion and Protection of Human Rights 2006-2016.

25 All resolutions are available in DIGNITY's Training Collection III, available at [www.dignity.dk](http://www.dignity.dk) (under legal department).

26 See further at [www.cti2024.org](http://www.cti2024.org)

27 Evaluation of Danish Support to Promotion and Protection of Human Rights 2006-2016, p. 71.

### 3.3 IMPLEMENTING HRBA: DUTY-BEARERS AND RIGHTS-HOLDERS

In the fight against torture, the principal legal duty-bearer is the state, including the various state actors within the ordinary criminal justice sector, such as the police, prosecutors, and judges. Rights-holders include every individual without distinction who is entitled to be free from torture.

The international normative anti-torture legal framework, which governs relations between the state and its citizens, sets out the clear prohibition of torture, as stipulated in the general human rights instruments, such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Right (article 7) and the UNCAT (article 1 and 2) ratified by 171 countries<sup>28</sup>, including Jordan and Tunisia, and the OPCAT that 90 countries, including Tunisia, have ratified.<sup>29</sup> States which have ratified the UNCAT have legal obligations to prevent and punish torture and other cruel, inhuman or degrading treatment or punishment, and are accountable to their citizens for respecting, protecting and fulfilling the standards in the UNCAT. Obligations of particular importance for engagement with criminal justice institutions include the following:

Articles 2 and 16: Prevention of torture and cruel, inhuman or degrading treatment or punishment.

Article 4: Obligation to criminalise torture (in accordance with Article 1).

Article 5: Establishment of jurisdiction over the offence of torture.

Article 7: Obligation to extradite or prosecute suspected perpetrators of torture.

Article 10: Training of law enforcement personnel, medical personnel and public officials.

Article 11: Review of interrogation rules and detention practices.

Article 12: Prompt and impartial investigation and prosecution of suspected perpetrators of torture and cruel, inhuman or degrading treatment.

Article 13: Right to complain and protection.

Article 14: Right to redress, and fair and adequate compensation.

Article 15: Obligation not to invoke evidence obtained as a result of torture in legal proceedings.

DIGNITY's approach in Jordan and Tunisia addresses both duty bearers and rights holders, in line with HRBA, has comprised the following:

- Building the capacity of state actors within the criminal justice sector to implement UNCAT, including through legislative reforms, and best practices where legislation is not in line with the obligations of UNCAT.
- Building the capacity of CSOs and professional associations (such as national bar associations) to understand policy context and -processes and ways to increase the possibility of holding state actors accountable.
- Facilitating trust-based relations and alliances and developing a policy dialogue between the state and CSOs.

The full HRBA methodology and its five principles are the foundation of DIGNITY's strategy. This contributes to the sustainability of DIGNITY's programmes, and through the involvement of civil society actors ensures the accountability of the state actors.

DIGNITY is cognizant that the process is itself a development goal, according to HRBA, and thus process goals are also noted as important outcomes in the ToC as well as in the project documents, and process milestones are therefore to be identified in monitoring and evaluation work.

Finally, DIGNITY's cooperation with multilateral institutions (such as the EU and the UN) ensures that all relevant actors are engaged in the process, with a view to promoting accountability for and prevention of torture. However, in order to ensure full HRBA implementation, there is a need to enhance the participation of torture victims in our programming, an outcome and an achievement which most often is difficult to achieve, though it remains a key outcome.

28 As of 17 June 2021, see The UN Treaty Collection [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&midsg\\_no=IV-9&chapter=4&lang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&midsg_no=IV-9&chapter=4&lang=_en)

29 See note 28

## 4. THEORY OF CHANGE

This Chapter will present the ToC adopted by DIGNITY in order to explain the main objectives of DIGNITY's SD-Programme (section 4.2). The specific objectives at both the process and outcome levels are explained in section 4.3 and relate to development changes at four levels (section 4.3.1-4.3.4).

### 4.1 THEORY OF CHANGE

DIGNITY has developed a ToC describing how to prevent torture through criminal justice sector reform based on the research and the models outlined in Chapter 2 (see figure 1). This ToC informs the SD-Programme and builds on lessons learned during its implementation.

The ToC considers a range of relevant areas of criminal justice sector reform, even if DIGNITY itself does not work on all these areas directly. The ToC, which explains all the assumptions and necessary conditions for achieving the desired change and how these relate to each other, contains two main pathways for achieving the objectives of anti-torture interventions within a national criminal justice system:

- Combatting torture through investigation, prosecution, and accountability, i.e. holding perpetrators accountable (prosecution strategy).
- Preventing torture by 1) reducing the use of pre-trial detention and increasing access to legal safeguards at the outset of detention; 2) judges not accepting confessions for which there are reasonable grounds to believe were obtained as a result of torture (prevention strategy).

The prosecution strategy, which relates to interventions **after** torture has occurred, rests on two key assumptions: 1) The threat of being held accountable deters or discourages potential future perpetrators from committing torture in the first place; and 2) justice and accountability are pressing needs for victims of torture and for this reason victims will therefore participate in these processes.

The prevention strategy relating to interventions before the act of torture occurs rests on two key assumptions: 1) The risk of torture and ill-treatment is highest during the initial hours of arrest and detention. Improving the safeguards during police custody and pre-trial detention, for example ensuring prompt access to a lawyer and allowing a lawyer to play an active role in the pre-trial detention phase defending his/her client's rights, would diminish the risk of torture. Moreover, from a quantitative perspective, decreasing the number of people held in pre-trial detention and decreasing the duration of pre-trial detention and the probability of being released, would reduce the total number of persons in detention, and thereby prevent torture; and 2) The incentive to use torture as a mean to obtain a confession from a suspect would decrease when the risks of the evidence being declared inadmissible increases. In addition, the two strategies rest upon a number of pre-conditions as explained in figure 1.

### 4.2 PROGRAMME OBJECTIVES: PROCESS AND OUTCOMES

The prosecution and prevention ToC both operate with the following four levels for development results that can be at process level or at the level of outcome/direct impact within the criminal justice system:

- Policy reforms
- Legislative reforms
- Changing attitudes and practices of key stakeholders
- Institutionalisation of changes in knowledge or new practices

Changing attitudes and practice, as well as institutionalisation, reflects the conclusion that "what matters is not the law, but practice".<sup>30</sup> Thus, key actors need to have acquired skills to implement the law, and they need an institutional environment that encourages them to use these skills.

Which level to focus on in any given project phase, is determined after elaborating discussions between DIGNITY and partners, and takes into consideration DIGNITY's and our local partners' capabilities and spheres of influence.

#### 4.2.1 Policy reforms

Comprehensive political reforms specifically targeting the prevention of torture are rare due to the complexity and sensitivity of the topic of torture.

However, policy changes may occur at many different levels and relate to change in attitudes towards the fight against torture or broadly to criminal law. By way of example, policy reforms emerged from the revolution in Tunisia in 2011 and in Jordan around 2009 from the highest level when the King of Jordan initiated a process of reform of the criminal justice system.

DIGNITY has experienced that "invisible" policy changes may lead to the important first step being taken in a country, i.e., the recognition of the prevalence of torture and allowing stakeholders to openly discuss how to prevent it.

Subsequently, when the policy change has occurred, DIGNITY can play a role in bringing together key stakeholders. This happened first for lawyers, prosecutors, and judges in Tunis in 2012 when DIGNITY organised a meeting to discuss how to document torture. Similarly, in Jordan, DIGNITY was able to gather defence lawyers and prosecutors for the first time in the same room to discuss how to regulate pre-trial detention.

#### 4.2.2 Legislative reforms

Legislative amendments, which are of relevance for the eradication of torture, primarily entail modifications to the national constitution, the criminal code (for example by criminalising torture in accordance with Article 4 of UNCAT), and the criminal procedure code (for example by properly regulating the use of pre-trial detention and rules relating to evidence). It could also include amendments to other laws, for example the law governing the bar association to allow defence lawyers to be present immediately after arrest, or to the civil code to allow compensation to victims of torture in accordance with Article 16 of UNCAT.

The process of legal reform in the human rights field is also important, as it is a way to make people understand better their rights and how they are protected in the law. The process of involving key actors in developing new legislation is equally important as a way to empower them.

#### 4.2.3 Changing Attitudes and Practice

Capacity support and provision of technical assistance - legal knowledge - are key components of DIGNITY's SD-Programme, as what matters is not the law, but practice. Thus, basically, key actors need to have acquired the knowledge and skills to implement their obligations under international law, even when national legislation may not comply, and the system needs to allow them to do things differently.

Capacity support to the target groups have been undertaken by DIGNITY's legal department and the Danish Legal Expert Group (see below).<sup>31</sup>

The drafting and launching of various manuals related to the implementation of legal standards have established platforms for dialogue with larger groups in society and discussions that would contribute to a more robust understanding of the legal framework. How this was done in Jordan and Tunisia is discussed in further detail in Chapter 6.

DIGNITY's approach to skill-based training involves the process of imparting knowledge to participants and facilitates the building of alliances amongst like-minded actors who in other settings will carry forward the key messages related to combatting torture.

DIGNITY's training is based on the following 3-level model:

- Increased **knowledge** and awareness about international standards in the UNCAT.
- Improved **attitudes** towards implementation of international standards in practice.
- Changes in observed performance during training and in individual **practice** in a subsequent work situation.

This **KAP (Knowledge, Attitude, Practice) learning model** and the way of identifying behavioural change developed within DIGNITY is based on best practice,<sup>32</sup> input from external consultants and lessons learnt during the implementation of the SD-Programme. The model keeps the local partners in the "driving seat" by initiating and implementing each of the learning phases, which gives them a strong sense of pride and ownership in the trainings and their impact.

Focus is also on nudging professional pride and ownership of reform processes, and thus learning skills that the target group values so that they feel that they can do their job more professionally. However, DIGNITY is well-aware of the big step from acquiring new skills to actually putting them into practice and of the obvious limitations of institutions not allowing such changes.

#### 4.2.4 Institutionalisation

Institutionalisation of new knowledge and practice is closely linked to the sustainability of development programme interventions by ensuring that behavioural changes in practice are anchored in an institution. Therefore, DIGNITY always includes in its SD-Programmes a workstream related to institutionalisation of changes. However, there is no quick fix for moving from results at the individual level to changing practices within an institution. The momentum for important and lasting changes within an institution would depend upon a number of factors outside of DIGNITY's sphere of influence. By way of example, the nomination of the head of the working groups tasked with collaborating with DIGNITY and other key leaders within an institution and their personal capacities and interests.

Institutionalisation could relate to ad-hoc training manuals being adopted as regular training curriculum within an educational institution. For example, when guidelines and training material for judges, prepared by a Working Group, are formally adopted by the country's High Judicial Training Institute following the normal procedures for doing so and will be used by all trainee judges enrolled at the institute. This is a guarantee that the guidelines will be useful and relevant well-beyond the timeframe of the specific project phase. Institutionalisation could also concern adoption of a technical support programme to be used by specific actors in the criminal justice system (see further Chapter 6).

<sup>31</sup> The group includes various Danish institutions (such as the Danish Chief of Prosecution Office (Rigsadvokaten) and the Danish Bar Association) and individuals, such as law professors and former prosecutors.

## 5. METHODOLOGIES

This Chapter will present the key development methodologies adopted by DIGNITY in order to achieve the main objectives of DIGNITY's SD-Programme, including the key decisions about how specifically to implement the ToC in the contexts of Jordan and Tunisia.

The partnership approach has been anchored around working groups, nominated by the Ministries of Justice in the countries where we have such programmes. These working groups are DIGNITY's counterparts of the SD-Programme interventions, and it is with these groups that DIGNITY discusses issues such as ToC, strategy development of specific programme phases, technical exchanges and peer-to-peer dialogues, result deliveries and activity planning. While programme-related issues have been discussed through a highly collaborative approach, the actual drafting of guidelines and carrying out of trainings for judges and prosecutors has been done with the working groups taking the lead, leaving DIGNITY to support the process and provide technical assistance on specific legal issues.

In section 5.2-5.3, this chapter will describe the SD programme's strong component of technical assistance, such as legal advice from DIGNITY's legal department; programme advice from DIGNITY's development experts and peer-to-peer exchanges and dialogues with counterparts in Denmark and elsewhere. Moreover, to the extent possible within resource allocations, DIGNITY, also works towards applying a broader perspective on the entire criminal justice sector to ensure that several actors, such as lawyers and civil society organisations hold the state partners accountable (section 5.4). Similarly, DIGNITY aims coordinating interventions with other international organisations (section 5.5). Finally, this section explains DIGNITY's M&E system (section 5.6).

### 5.1 PEER TO PEER DIALOGUE WITH DANISH EXPERTS

DIGNITY has prioritised peer-to-peer exchanges between local state and civil society partners in Jordan and Tunisia and Danish counterparts whom we have brought together in DIGNITY's Danish Group of Legal Experts. The membership of the group has varied depending upon the target groups in DIGNITY's SD-Programmes, as well as the strategic focus of a specific implementation phase. Over the years the group has included various institutions within the Danish legal sector which have expressed interest in contributing with technical assistance, and individual prosecutors, judges, police officers, defence lawyers, and law professors.

The participation of Danish institutions in the Group of Legal Experts provided strong legitimacy to the SD-Programme. By way of example, in Jordan, the participation of the Danish Chief of Prosecution Office (*Rigsadvokaten*), which has been a partner in the KARAMA programme since the beginning, as well as the participation of the Criminal Law Committee within the Danish Bar Association since 2018, have opened doors and bolstered relationships based on mutual trust.

In addition to providing legal technical advice, the various experts have over the years provided valuable input to strategic considerations and always strongly stressed the importance of local engagement and ownership. In other words, Danish experts have been adamant to take the local partners and their current context as the point of departure and that approach has facilitated the dialogue. Moreover, due to the in-depth historical knowledge of the Danish legal tradition, Danish experts have been able to understand the obstacles in the Jordanian and Tunisian legal systems and explain how the Danish system evolved. For example, on the issue of confessional evidence, the Danish Legal Expert group has been able to share with Tunisian counterparts how Denmark evolved from considering confessions as prime evidence to hardly regarding them in a criminal case or how Denmark is seeking to reduce the high use of pre-trial detention.

This peer-to-peer exchange within same professional groups (i.e. judges-judges; prosecutors-prosecutors; or lawyers-lawyers) has been highly valued by the partners because they are seen as equals and the discussions become more pertinent to shared technical and real-life issues. They have valued both their peers' professional position and experience, and they have been very responsive to input from their Danish peers.

This form of exchange is particularly important given that DIGNITY is an NGO, and therefore has limitations with respect to the scope of shared experiences with its SD-programme partners. This modality also provides the opportunity for DIGNITY to focus on technical input, while playing the more neutral role of facilitator of dialogue between the local and Danish professional groups – rather than being perceived as an international human rights organisation promoting certain ideas.

### 5.2 SOUTH-SOUTH AND NORTH-SOUTH DIALOGUE

Bilateral peer-to-peer exchanges have been organised between Jordan and Tunisia, as well as with other countries.

These dialogues have been organised with different purposes ranging from strategic discussions prior to initiating new project phases to more content-focus when drafting guidelines. For example, in 2014, the Tunisian partner visited their Jordanian counterparts in Amman to exchange experience about the drafting process regarding the guidelines on investigation and prosecution.

It can also have an added value to facilitate contact between the SD-partner and different professional groups outside their home context to expand their knowledge of the prohibition of torture. By way of example, in 2015, the working group of the Jordanian KARAMA programme, which was headed by the Secretary General of the MoJ, Ahmed Jamalila, and the Chief Prosecutor Dr. Akram Massadeh, visited the NEBRAS Centre for Rehabilitation of Victims of Torture in Tunis to learn from doctors about the physical and psychological consequences of torture. The visit was an eye-opener for them both and listening to doctors explaining the pain and suffering resulting from torture paved the way for a change of attitudes. The Secretary General subsequently contacted the rehabilitation centre in Amman (Institute for Family Health (IFH)) in order to involve a doctor and psychologist specialised in torture rehabilitation in his future training for prosecutors and judges. The Chief of Prosecution took the initiative to register all torture allegations.

Finally, a number of study tours to the north have been organised, including to Denmark and Belgium, to allow partners to experience practice with clear human rights focus and different methods for the prevention of torture. For example, Belgian judges have been involved in various dialogues with the Tunisian MoJ and this has proven particularly relevant and useful, as the former's legal framework and institutional structure is very similar to that in Tunisia.

Thus, the lesson learnt is that study tours, which include visits to countries that have similar legal and institutional frameworks to the partner's country of origin, potentially have greater impact in terms of changing attitudes than study tours to countries with different legal systems.

### 5.3 SECTORIAL APPROACH

The justice sector involves a large number of institutions, and it is DIGNITY's experience that scaling-up programmes by for example moving from a perspective of one or two actors to a wider sectorial approach involving, if possible, all actors in the criminal justice sector has potential to achieve greater impact. This is because the various actors establish new relationships and begin to formulate and agree to joint commitments and begin to hold each other accountable to these commitments.

In Jordan, the criminal justice sector involves all the main state institutions:

- Judicial Council
- The Public Security Directorate (PSD)
- The MoJ
- The Prosecution Office
- The Jordanian Judicial Institute

On the rights-holder side, key organisations include:

- The Bar Association
- The National Centre for Human Rights
- Civil Society Organisations

Initially three criminal justice institutions were official partners of the KARAMA programme (see Chapter 1). Other state institutions have also been involved, such as the Judicial Council – the highest judicial institution in Jordan – and the Judicial Institute, which is responsible for training prosecutors and judges, and the institutions' involvement has increased over the years.

In addition to state partners, key civil society actors within the criminal justice sector have become involved in the KARAMA programme, and most prominently the National Bar Association and the Jordanian Civil Alliance against Torture (JOCAAT).

In Tunisia, for the first phases of the programme, DIGNITY focused on the partnership with the MoJ. Subsequently, DIGNITY has established a new partnership with the Administrative Tribunal focused on enhancing the right to reparation for victims of torture.

### 5.4 COOPERATION WITH MULTINATIONAL ORGANISATIONS

Relatively speaking, DIGNITY is a small actor with limited resources focusing on technical assistance and impact within very specific mandate i.e. prevention and eradication of torture by fulfilling international human rights' obligations.

The success of this approach depends upon more sustainable reforms of the broader criminal justice systems towards being able to guarantee fair and efficient delivery of justice generally, and to allow for individuals within our target groups to use their new capacities and make changes within their system specifically. Thus, our programmes will see more progress if adequate resources are allocated generally to efforts to reform the criminal justice sector. Such reforms can be triggered by multinational organisations, such as the European Union and agencies of the UN who have greater weight in the political arena and who bring considerable resources to the countries.

Benefits for DIGNITY of building alliances with such actors would also relate to stronger capacity building (e.g. prosecutors gaining general skills in investigating crimes and not only related to investigating the crime of torture) and stronger push for broader policy and legislative reforms.

Partnering with like-minded organisations and institutions on sensitive matters – e.g. the prevention of torture – also makes these issues more visible and harder to ignore by actors less keen on undertaking reforms.

With regards to establishing such partnerships, it is our general experience that progress in programme implementation directly translates into new and better relations with other international organisations. When DIGNITY is being perceived by local partners as a professional partner, which seriously aims for delivering results, then international organisations show greater interest in inviting DIGNITY into discussions – even to the extent of having the possibility to influence reform agendas.

In Jordan, this was successfully done, when together with the MoJ, DIGNITY established good working relationships with the EU local office in Amman and bilaterally established good dialogue with the UN Residence Coordinator. A result of this collaboration was that the EU implemented a budget support programme for criminal justice reform in Jordan from 2014-17 (Supporting the Jordan Justice Reform) included the reduction of pre-trial detention as one of the seven main objectives. Many of the activities to achieve the goal were implemented by the KARAMA working group in cooperation with the EU technical staff. The evaluation of the project concluded that:

There is evidence that the work of the KARAMA project and the EU Justice project have started to have an impact on the use of pre-trial detention in Jordan.<sup>33</sup>

In Tunisia, DIGNITY engaged with the International Bar Association Human Rights Institute (IBAHRI), which has a strong track record of training judges and prosecutors in Tunisia, to carry out training of trainers (ToT) for judges and prosecutors. This cooperation made it possible to train approximately twice the number of magistrates than initially foreseen. Similarly, cooperation with the UN Office for the High Commissioner for Human Rights, the UN Development Programme, the International Legal Assistance Consortium, EuroMed Rights, and IBAHRI led to the organisation of a high-level seminar in December 2016 that served as a public forum for discussing the challenges faced in the fight against impunity for torture in Tunisia. As a result, political authorities made public commitments to address these issues.

## 5.5 MONITORING AND EVALUATION

The possibility of capturing *process* outcomes is highly important under the SD-Programme because many interventions relate to building relationships and creating conditions for changes and moreover, because the overall objectives (the prevention and eradication of torture in the two countries) are not achievable within specific project phases. Rather, changes occur incrementally, and must be documented by a variety of social actors.

In Jordan and Tunisia, basic information and statistics are unavailable, such as the number of torture cases pending before the courts, content of preliminary investigations or number of judgements related to pre-trial detention. This lack of statistical data poses a challenge for documenting impact.

Initially, DIGNITY used a simple M&E system that was developed internally and focused on partner reports and evaluating the effect of training (by using pre- and post-training questionnaires). DIGNITY realized, however, that partners mainly reported on activities and not on changes, and that the M&E system did not effectively capture process outcome and results. DIGNITY changed its M&E system and began to use the methodology of outcome harvesting to monitor and evaluate changes through its interventions.

Outcome harvesting is described as:

A methodology used to identify, describe, verify and analyse the changes brought about through a development intervention. It is designed to collect evidence of change, and then work backwards to assess contribution to that change.<sup>34</sup>

An outcome is defined as: A change in the behaviour, relationships, actions, activities, policies, or practices of an individual, group, community, organisation, or institution.<sup>35</sup>

In addition to internal M&E, four external evaluations were commissioned by DIGNITY and took place to assess progress and identify needed amendments to strategies and methodologies (all on file with authors):<sup>36</sup>

- Evaluation of the KARAMA programme Phase 1 and II, Patrick Twomey, 2014
- Evaluation of the KARAMA programme Phase III, Dorthe Skovgaard Mortensen, 2016 (Skovgaard Evaluation)
- Evaluation of the project to reduce the use of pre-trial detention in Jordan, Robert Allan, 2016
- Evaluation of DIGNITY's programme in Tunisia, Coney Foley, 2017 ...

The findings in the external evaluations were discussed with local partners and necessary adjustments were made, for example shifting the overall strategy from one focused on prosecution to one focused on prevention.

<sup>33</sup> Report by Torben Adams (May 2017), p. 37..

<sup>34</sup> Intrac for Civil Society, Outcome Harvesting (2017), available at <https://www.intrac.org/>

<sup>35</sup> *Ibidem*.

<sup>36</sup>

The broader evaluation by MFA of DIGNITY in 2015 and their evaluation of the DAPP programme (2015-2016) also provided useful findings that influenced the further design and implementation of the programmes (on file with authors).

## 6. KEY OUTCOMES (PROCESS AND END RESULTS) AND CHALLENGES<sup>37</sup>

As explained in the previous chapters, DIGNITY's approach to preventing torture through criminal justice system reforms is not a 'quick-fix' endeavour. As we know, and as research has confirmed, legal reforms and changing professional and institutional practices in the justice system is a long, slow, and demanding process with only very gradual achievements, and this is especially so when it comes to the sensitive topic of combating torture.

We have over the years learnt to become more realistic about what we can achieve in a project phase, especially due to the obvious fact that the political context affects the expected outcomes, and that delays in implementing political reforms may slow down the process of change. By way of example, DIGNITY had more ambitious expectations in Tunisia than in the Kingdom of Jordan due to the spirit of reform that followed the 2011 revolution. However, in hindsight, these may have been overly optimistic, and we can see today that political reforms have taken longer to trickle down through the system. As such, prosecutions of torture cases in Tunisia continue to be rare and victims of torture continue to face many hurdles when seeking justice.

This chapter will discuss key outcomes at both the process and end-result level with regards to partnerships (state and civil society) (section 6.1), legal reforms (section 6.2), political reforms (section 6.3), changing attitudes and practice (section 6.4) and finally at the level of institutionalisation (section 6.5).

Both programmes have been reviewed externally on a regular basis, as mentioned above, and the evaluation findings confirm the results and challenges mentioned below.

### 6.1 PARTNERSHIPS

In line with HRBA, which underlines that the *process* is as important as the end result (see chapter 2), DIGNITY has invested considerable resources into developing strong and close partnerships with the state partners, mainly through its local offices in Amman and Tunis. These trust-based partnerships have necessitated patience in both Tunisia and Jordan, and the local DIGNITY offices have facilitated a continuous and regular dialogue and liaison with the partners. Coupled with the technical input from DIGNITY's Copenhagen office, these efforts have ensured productive work relations. The partnerships between state institutions and DIGNITY, an international NGO, are in and of themselves, considerable achievements and should be seen as important process-level outcomes. In addition, DIGNITY has engaged heavily in partnerships with civil society organisations in both countries.

Despite the overwhelmingly positive experience of this partnership model, it has not been without its challenges. When obstacles have arisen – for example changes in

key counterparts due to political changes which has resulted in loss of institutional knowledge - the importance of mutual trust and confidence have been fundamental to overcome the obstacles and continuing the collaborative work. Most challenges have been surmounted through an on-going and open dialogue between DIGNITY and its partners. When challenges faced were more serious and with more consequential impact in terms of delayed or no implementation of activities, DIGNITY recognized the importance of expanding the number of partners, including beyond executive institutions, to seek new areas of influence with potential for impact.

The partnerships with the rights holders in the HRBA structure, i.e., with civil society organisations, continue to be crucial for the legitimacy and sustainability of both programmes in Jordan and Tunisia. Furthermore, the facilitation of dialogue between the state partner and civil society has been a priority, especially in Jordan where the NGO MIZAN for Law have continued to play a key role in advocating for legal and policy initiatives to combat torture. By way of example, MIZAN has prepared critical reports, advocated for a new anti-torture law, and organised trainings for lawyers that were supported by interventions from judges.

MIZAN's work in support of victims of torture has been complemented by other organisations, such as a local trauma and rehabilitation centre (IFH), and a coalition of NGOs, namely the Jordanian Coalition against Torture, which was established by DIGNITY, and which has played an important role in UN examinations of Jordan.

The Jordanian MoJ has also engaged with civil society organisations. In July 2016, the Ministry reached out to IFH for training on psychological and physical consequences of torture, and this was the first time IFH clinical competencies were requested by MoJ. The Judicial Council nominated all prosecutors and judges to receive the training and the last round of trainings took place in October and November 2017. DIGNITY played a crucial role in linking IFH with the MoJ from the first step of organising a visit to IFH to several meetings and then finally to the official meeting between IFH and the working group at the MoJ that was held at IFH office. Subsequently, IFH also had training cooperation with other state actors (such as the Family Protection Unit within the PSD). Such increased cooperation between the state and local NGOs - without DIGNITY's initiation - is a sign of the state's willingness to engage in dialogue with civil society, and even to learn from their expertise and professional approaches.

The dual partnership model, through which DIGNITY has listened and responded to the needs of local partners, also ensures that DIGNITY has not been perceived as promoting its own agenda in Jordan and Tunisia. As noted by the regional representative of Human Rights Watch in Jordan:

The KARAMA programme is unique in terms of cooperation. The fact that the Ministry of Justice has joined on the issue is a major achievement. I could imagine that an initiative which involves the government could be accused of giving the government an opportunity for window dressing, but the involvement of NGOs ensures accountability of the government.<sup>38</sup>

The specific working groups designated by state partners to collaborate with DIGNITY (see chapter 5) have contributed significantly to the success of the partnerships. Members have carried out their tasks outside of their normal business hours and outside of their day-to-day professional responsibilities – i.e. on weekends and in the evenings. The level of mutual respect between DIGNITY staff and members of the working groups has meant that our collaborations have been a mutually positive, fruitful experience. All have been encouraged to present ideas and through regular meetings entailing lively and intense discussions and new areas of cooperation have been identified.

## 6.2 POLICY REFORMS

Policy reforms can take various forms. Generally, the European Union and other large donors and organisations with sufficient leverage focus directly on influencing the policy level whereas DIGNITY would rather use technical assistance as the entry point in order to influence decision-making on the policy-level. This way, DIGNITY is perceived by local partners as a technical partner rather than a political one.

In both Jordan and Tunisia, breaking the public taboo surrounding torture was the first step towards reforming policies and changing mentalities among key stakeholders, and the public in general. Making the fight against torture a national priority – even without future Danish support – allowed for discussions about necessary reforms and paved the way for high-level officials to engage in anti-torture meetings and training, and for the judiciary to be generally more involved in a dialogue about their role in combatting torture and ill-treatment.

For obvious reasons, namely the revolution of 2011, **Tunisia** offered a more favourable context than Jordan, for human rights-related reforms and DIGNITY has noted significant policy reforms in Tunisia in the period 2011-2019 that indicate a will to address the reality of torture. An example of this is Tunisia's ratification of the Optional Protocol to the UNCAT in 2016, and subsequent establishment of a National Preventive Mechanism in 2018. Similarly, legislative reforms were adopted allowing for detainees to have access to a lawyer from the moment of arrest as well as other legal safeguards. These are all highly significant developments for the prevention of torture. Another important observation is the increased sophistication in the dialogue surrounding torture by state officials, as well as their increased commitment to combating it. This was noticed when comparing the discussions that took place during High Levels Seminars held in Tunis in November 2014 on torture with those of a similarly themed seminar held in December 2016. The difference amongst the way in which members of the judiciary discussed the issue was particularly notable, however almost all stakeholders present at the 2016 seminar displayed a much more sophisticated understanding of the state's responsibility in preventing torture.

DIGNITY attributed these changes to the important policy changes that emerged in Tunisia in the aftermath of the 2011 revolution which gave new life to the fight against torture: Human rights activists fighting torture were no longer in danger (for example the renowned human rights defender Radia Nasrawi); many actors expressed a strong push for torture being a phenomenon of the past; it was possible to seriously discuss solutions and new institutions were established, such as the Tunisian Institute for the Rehabilitation of Victims of Torture (NEBRAS) founded in 2014 and the first centre to provide treatment to torture survivors.<sup>39</sup>

With regards to **Jordan**, a willingness to amend legislation emerged. As noted in an external review of the KARAMA programme (2016):

Knowledge on torture has evidently been built and impacted the professional attitude towards torture in the criminal justice sector; exemplified by the willingness to amend legislation in accordance with international standards and by developing guidelines and registration systems to combat torture.<sup>40</sup>

Importantly, in 2016, King Abdullah II, for the first time, established a royal committee to recommend legislative changes to accelerate the process of judicial reforms. The Royal Committee for Developing the Judiciary and Enhancing the Rule of Law released its report on 18 February 2017. The report included strategic policy priorities, such as increased emphasis on the issue of pre-trial detention in the criminal justice system (recommendation 49).<sup>41</sup> As a result, the Criminal Procedure Code was amended by Parliament later the same year (see above); this process moved with more speed when compared with the usual slow legislative process, indicating the strong political will behind the changes. Specifically, with regards to the priority of reducing pre-trial detention, the Committee influenced the opinion of the MoJ and the Judiciary and provided legitimacy to focus on pre-trial detention in their collaboration with DIGNITY.

Another example of Jordan's political commitment came in January 2015 when the Chief of Prosecution Dr. Akram Masadeh sent out an official letter to all prosecutors in Jordan stating that they had to register any allegation of torture in the Central Registry in the MIZAN case management system (not related to the NGO MIZAN) and that they had an obligation to investigate the complaint.

However, major policy reforms regarding criminal investigations undertaken by the police (e.g. to move the jurisdiction from the police to civil courts) and ensuring accountability continue to be difficult in Jordan.

Jordan has also stepped up its involvement in the UPR process, and its responses to the recommendations of the last review in 2018 were more substantial than in previous reviews.

Finally, political will can also come in the expression of allowing new partnerships. By way of example, the involvement of the Jordanian Bar Association in the KARAMA programme required political will from the MoJ and was specifically facilitated by the involvement of their Danish counterparts, i.e., the Danish Bar Association.

## 6.3 LEGISLATIVE REFORMS

In both Tunisia and Jordan, legal reforms to better incorporate the obligations of the UNCAT into national legislation have been key objectives from the beginning of the programmes, and important reforms have occurred during the period 2008-2019:

<sup>40</sup> Skovgaard Evaluation, p. 34.

<sup>41</sup> Royal Committee Report for the Development of the Judicial system and strengthening rule of law (2017): "Controlling and limiting pre-trial detention, using alternatives, provide guarantees (...)" (on file with authors).

### Jordan

The most significant legislative reforms with regards to the prohibition and prevention of torture, which have taken place during the period 2008-2019, are the following:

- In 2009, the amendment of the Criminal Procedure Code to limit the number of crimes in relation to which pre-trial detention was permitted.
- In 2011, the Constitutional amendment of Article 8(2 that prohibits torture, and guarantees annulment of any testimony obtained under duress;<sup>42</sup>
- In 2017 and 2018, the amendment of Article 208 to raise the minimum penalty for torture from 3 to 6 months and the maximum from 1 to 3 years.<sup>43</sup>
- In 2017, the amendment of the Criminal Procedure Code to ensure that pre-trial detention is used as the last resort for which justification must be provided, and to provide for the option of using alternatives to detention.

### Tunisia

Since 2011, Tunisia has adopted a number of important legislative reforms, bringing its national law into greater conformity with the UN Convention Against Torture. These include:

- In 2012, the Criminal Code was amended to include a provision criminalising torture (Article 101 bis).
- In 2014, a new Constitution was adopted which includes an explicit prohibition of torture.
- In 2016, Tunisia ratified the OPCAT and has since established a national preventive mechanism.
- In 2016, the Tunisian parliament adopted a series of amendments to the Criminal Procedure Code (CPC), including to Article 13(bis), which established key legal safeguards against torture, including limiting the period of police custody (*garde à vue*) to 24 hours for misdemeanours and 48 hours for crimes; requiring written warrants of arrest from prosecutors (except in cases of *flagrante delicto*); guaranteeing access to a lawyer for arrestees from the moment of apprehension and during all interrogations; guaranteeing the right to inform a family member of the arrest; and the right to request a medical examination while in police custody.

Various national reform processes have unfolded, and a number of criminal justice sector reform programmes have been implemented concurrently by various international actors.

DIGNITY's interventions contributed to the positive legislative developments regarding the prohibition or prevention of torture. By way of example, the regular dialogue between DIGNITY and the Ministries of Justice and members of the working groups regarding international standards has often led to relevant discussions on legislative reforms, and thus have influenced the ongoing discourse amongst the authorities on the legislative reforms necessary for the implementation of UNCAT.

Moreover, an increased awareness of the international human rights standards among key actors may have contributed to these amendments. By way of example, in Tunisia, the important amendments to Article 13(bis) of the CPC (see above) reflected the recommendations of the working group that came out of the process of drafting guidelines on the role of judges and prosecutors in combating torture which subsequently were presented to the Minister of Justice and the Parliamentary Committee responsible for overseeing amendments to the CPC. While not exclusively attributable to the recommendations, the Tunisian Working Group considers these amendments to be partly a result of its recommendations.

Finally, DIGNITY has itself on specific occasions directly provided input to draft legislation. By way of example, in 2015 DIGNITY provided input to the reform of the Criminal Procedure Code in Jordan and suggested that Article 114 should directly refer to pre-trial detention being the exception.

Such legislative reforms are positive steps towards combating torture in the criminal justice system as well as preventing it.

## 6.4 CHANGE OF ATTITUDES AND PRACTICES

Following the KAP learning model, DIGNITY has developed and supported new capacities among the target groups.

The guidelines drafted by the local working groups include Guidelines on the Role of the Judiciary in Combating Torture (Tunisia). Guidelines on the Investigation of Torture (Jordan) and Guidelines on Pre-trial Detention (Jordan) were adopted at high-level seminars, endorsed by ministers and chief prosecutors, and then widely distributed to target groups. They formed the basis of training and ToT-programmes to build the capacity of judges and prosecutors to investigate and prosecute cases of torture in line with international standards and to resort to pre-trial detention as an exception. The trainings were mainly targeting judges and prosecutors, but gradually in **Jordan** they were expanded to include defence lawyers and the National Bar Association to allow for joint discussions of the respective roles of prosecutors, judges, and defence lawyers in upholding fair trial standards during the pre-trial detention phase.

Such guidelines have been popular in both countries, and in many ways, they have taken on a life of their own, becoming well-known not only among prosecutors and judges, but also to donors and the NGO world.

<sup>42</sup> "Any person who is arrested, placed in custody, detained or subjected to any restriction on his or her liberty shall be treated with dignity, safeguarded from any form of torture or bodily or mental harm and held in no place other than a legally designated holding facility. Any statement obtained from any person by means of torture or the use of grievous harm or threats shall be deemed null and void."

<sup>43</sup> Law No. 7 and Law No. 27. See M.Y. Olwan, *Towards a Law against Torture and Inhuman and Degrading Treatment* (2019), available at [www.dignity.dk](http://www.dignity.dk)

In **Tunisia**, this has led to some unexpected opportunities that have enhanced the possibilities for their sustainability. For example, the national truth and reconciliation commission, the Instance Verité et Dignité (IVD) expressed an interest in being coached on the guidelines, and through a collaboration with UNDP's Tunisia Office, the Tunisian working group carried out a training for staff and investigators of the IVD on the guidelines. Similarly, the institute responsible for instructing prison guards also asked to receive training, and members of the working group participated in some seminars with prison guards who were provided with copies of the guidelines.

At the knowledge level, it is important to note that some individuals who have been trained under the SD-programme subsequently carried out important teaching functions under the cascade training model. In **Jordan**, a small group of prosecutors and judges, who had been trained under the KARAMA programme, began to provide training on international principles regarding pretrial detention to fellow judges at the Judicial Institute.

The results and challenges with regards to changes in attitudes and practice mentioned below are divided by country.

In **Jordan**, with regards to the prosecution strategy, the desired change of practice is limited to the role of prosecutors in the pre-investigation stage as they continue to have a limited mandate in torture cases. This is because the main investigation and prosecution of such cases still fall under the jurisdiction of the Police Court. In 2016, the Chief of Prosecution (head of all prosecutors) issued an order and established a Central Register of Cases of Torture and ordered prosecutors to register allegations and investigate the complaint, even on an *ex officio* basis (i.e. even if the prosecutor hears about a case in the news, during a criminal interrogation, or during an inspection to a prison).

The register has been used (in 2017, 30 cases were registered) and local NGOs report that complaints of torture continue to be registered with and handled by public prosecutors.

Challenges relate mainly to the jurisdiction of the Police Court, and despite the surge in preliminary investigations by both ordinary and police prosecutors in the Police Court in recent years,<sup>44</sup> there have been no final convictions based on Article 208 in the criminal code, and the NGO MIZAN has experienced having cases dismissed by the Police Court. Challenges in civil cases continue to dissuade lawyers and NGOs from initiating such cases.<sup>45</sup>

With regards to the prevention strategy (focus on reduction of the use of pre-trial detention), the use of such detention has been reduced from 47.9% of the prison population in 2005 to 36.9% in 2019.<sup>46</sup> Although it is always difficult to attribute

changes in practice directly to specific interventions, it should be noted that the reduction of pre-trial detention was a focus of DIGNITY's interventions. Although the broader EU criminal justice reform programme also included a workstream (7) on pre-trial detention, it relied heavily on the interventions under the KARAMA programme. An external review noted that:

It is confirmed that the increased attention to the use of pre-trial detention in consequence of the revised guidelines and the training of prosecutors has had a positive impact on the use of pre-trial detention in Jordan.<sup>47</sup>

Moreover, an additional independent evaluation report on measuring and reducing pre-trial detention confirmed that the KARAMA programme – together with the EU Justice Project – had had a positive impact on the use of pre-trial detention in Jordan.<sup>48</sup>

In **Tunisia**, the capacity building and training efforts under the SD-programme have led to new knowledge and a markedly more sophisticated dialogue on the role of judges and prosecutors in combating and preventing torture. This can be seen as important process-level results.

One area which has shown a practical shift in Tunisia is the documentation of torture cases for statistical purposes. Nearly all of the 26 tribunals of first instance in Tunisia now have a registry for such cases.<sup>49</sup> While this system is not yet centralised, the fact that such cases are now being recorded in a systematic fashion at the tribunal level alone is a significant outcome. In some tribunals, a prosecutor has been designated responsible for cases of torture (*substitut de procureur*) – another notable development.

As the KAP learning model has not been systematically applied and its impact properly assessed, it is hard to document other changes in attitudes and practice apart from what we have gathered as anecdotal evidence of some judges and prosecutors having become more favourable towards applying international standards on investigation and prosecution of torture cases. However, this has not yet led to an increase in the number of prosecutions and final convictions, and impunity for torture continues to prevail.<sup>50</sup> Furthermore, *ex officio* investigations do not appear to be taking place, and there do not appear to be cases of confessions deemed inadmissible for suspicion of extraction by ill-treatment.

With regards to reason for the lack of ultimate change of practices, it must be noted that there are a multitude of factors that impact on this, which are beyond the scope of DIGNITY's influence. An important lesson learned, therefore, is that training and capacity building of judges and prosecutors does not necessarily translate to changes in practice, and that such important changes are dependent upon broader reforms within the criminal justice system.

44 See Jordan's National Report to UN Committee against Torture (2014), available at [www.ohchr.org](http://www.ohchr.org).

45 However, in a rare case and after many years, in November 2017, the Appeal Court in Jordan allowed a torture case to proceed and asked for a list of witnesses. Later in early 2018, the Court established a committee to determine the amount of financial compensation.

46 World Prison Briefs, available at <https://www.prisonstudies.org/country/jordan>. This is confirmed by EU Evaluation conducted by Torben Adams who concluded that 37.24% of total inmates (14,445) were in pretrial detention in 2016, a reduction by 17.64% from 2015 to 2016.(May 2017).

47 Skovgaard Evaluation, p. 56.

48 Rob Allan, Evaluation of KARAMA programme,(2016)(on file with author).

49 Information received from the Tunisian working group.

50 Evaluation of the DIGNITY-MoJ partnership project in Tunisia (2017)(on file with authors).

## 6.5 INSTITUTIONALISATION

The objective of both programmes is to see positive behavioural changes institutionalised, and thereby achieve long-term sustainability.

This can happen at a technical level. In Jordan, the judiciary's case management system (MIZAN) was amended to include provisions for measuring the use of pre-trial detention on a case-by-case basis. Moreover, the system was modified to enable prosecutors to check the length of pre-trial detention and ensure that the legal time limits are respected. The system can generate useful data and enable future monitoring of the use of pre-trial detention according to different indicators – e.g. the number of pre-trial detainees as a proportion of the total of cases or defendants in the system, the reason for detention and release, as well as suspects' age, gender, and nationality. Prosecutors and judges have been trained in how to use the MIZAN system on a regular basis.

Institutionalisation can also happen in the form of new permanent curricula being adopted and guidelines being anchored in national training institutions. In Tunisia, the curriculum of the continuing education programme for prosecutors and judges of the Institut Supérieure de la Magistrature (ISM) now includes some sessions on the investigation and prosecution of torture cases. In Jordan, the Judicial Institute now includes the guidelines on pre-trial detention in training modules and the process towards developing a e-learning course at the institute has begun.

However, at a more general level, we continue to face challenges in moving from changing the attitude of some individuals to actual generating institutional changes. This challenge arises in particular when working with inherently political institutions such as Ministries of Justice.

## 7. CONCLUSIONS AND RECOMMENDATIONS

In addition to the well-known elements for effective development programming, such as baselines, communications strategies, and the need for sustainability as well as realistic timelines for impact, the following key lessons learnt from the SD-programme could provide inspiration to other development and human rights actors engaged in the prevention of torture:

### Overall strategy:

**Political will** to initiate the necessary legislative and institutional reforms and practice changes within the criminal justice sector and to engage with international and local organisations and institutions is indispensable. Where political will is lacking, impact will be elusive. Programmes for criminal justice reform should therefore include assessment of political will both within the risk assessment framework, as well as in the intervention strategy (either directly or in partnership with other larger actors working on criminal justice reform).

**Prosecution vs. Prevention Strategy:** While combating impunity is a central feature of the anti-torture movement, it cannot be denied that even in well-functioning democracies, ensuring accountability for torture is challenging and occurs only rarely. There are therefore strong arguments for shifting to a preventive strategy, or at least for taking a two-pronged approach, which also addresses the preventive role to be played by key criminal justice actors.

Incorporating HRBA fully into the programmes from the beginning requires resources but is fundamental for ensuring sustainable results.

**Revise the overall limitations of the programme scope:** It should regularly be assessed whether political will to expand the programme emerges so that the impact of the program can increase.

**Establishing equal partnerships** is a pre-requisite for effective implementation of DIGNITY's SD-Programmes, and local presence in the country greatly facilitates the building of relationships based on mutual trust with partners.

**A sector-wide approach** through cooperation with various actors, such as larger donors, international organisations and NGOs is crucial for criminal justice reform projects. Adopting an advocacy strategy towards such stakeholders and lobbying to ensure their projects are designed and implemented in a way that ensures complementarity of objectives and which prevents the need to undertake all the work with the various criminal justice institutions.

### Institutional Roles and the Perceptions:

**Credibility** is built at many different levels but can be enhanced by ensuring that all persons involved in criminal justice reform projects are highly dedicated, capable, and inspiring as a professional.

**Facilitating a process:** Strong focus on the process and facilitating each step with lengthy dialogue between partners on combating and preventing torture is a key role to be played by the implementing organization. This requires patience, yet it also entails that previously undetected and unexpected results will emerge during such exchanges.

**Provision of technical assistance** and solid legal input – including through peer-to-peer dialogue – steers the focus away from human rights criticism and provides the impression of a professional, serious partner.

### Implementation:

**Understanding and analysis of context is paramount** and provides an insight into project options. Moreover, legal practice differs from one context to another, and adequate resources should be allocated to understanding systemic barriers to change.

**Local ownership of the project** is crucial for facilitating the development processes and ensuring sustainability. Ongoing cooperation is key to ensuring such local ownership and creating change agents who can expect to yield further good results.

**Reduce risks by scaling up with new partners.** It is important to expand and work with a variety of partners and preferably all the key actors in the justice sector to ensure development outcomes and maximum impact of investment.

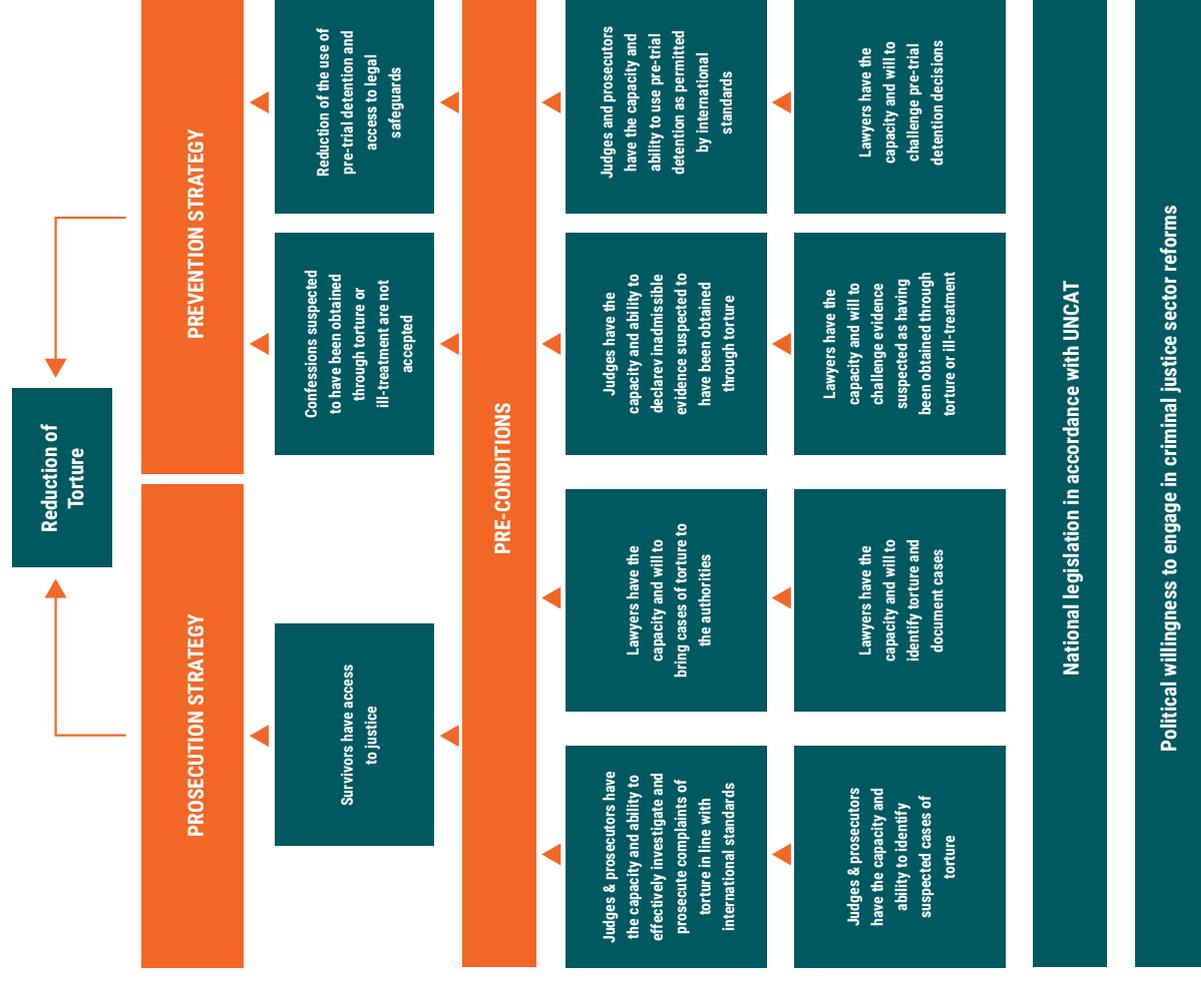
**Involving civil society** in any criminal justice reform programmes is equally important for ensuring that they have the skills and resources to hold state actors accountable.

### Monitoring:

**Effective M&E system** facilitates systematic tracking of progress, and the outcome harvesting system seems to capture well the complexity of SD-Programmes, and specifically the importance of *process outcomes*, such as the establishment of partnerships.

Ongoing **evaluation of the impact of the overall strategy** is necessary, including adjustments when new evidence shows that torture is more effectively prevented using another strategy.

FIGURE 1: OVERVIEW OF KEY ASPECTS OF DIGNITY STATE DIALOGUE THEORY OF CHANGE



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### 8.1 FURTHER READINGS

Programme specific documents are available on DIGNITY's website [www.dignity.dk](http://www.dignity.dk), including the following:

#### Jordan:

- Guidelines for prosecutors and judges on investigating cases of torture (Arabic and English).
- Guidelines for prosecutors and judges on regulating pre-trial detention (Arabic and English).
- Guidelines for lawyers on the regulation of pre-trial detention (Arabic and English).
- Recommendations from the Dead Sea Conference, 2013 and 2015 (Arabic and English).
- Jo Baker and Elina Søndergaard: Women in Detention in Jordan (2014), DIGNITY publication Series on Torture and Organised Violence # 9 (English).
- Rights Prior to Trial (MIZAN) (Arabic and English).
- Towards a Law against Torture (MIZAN and DIGNITY)
- Trainers for Trainers manual on the guidelines on investigating torture (Arabic).
- Detention centre visit checklist for prosecutors (Arabic and English).
- Dr. Hana al-Gallal (2013): A study to specifically identify the obstacles to justice for torture victims in Jordan (English).

#### Tunisia:

- The role of the justice sector in combating torture in Tunisia: a guide for judges and prosecutors.
- Recommendations from the November 2014 High Level Seminar and the December 2016 High Level Seminar.
- Trainers for trainers' manual on the guidelines for investigating torture (Arabic).

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**Overview and Analysis of Implementation in Jordan and Tunisia 2008-2019**

By Elna Søndergaard and Jo-Anne Prud'Homme de Hancourt

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