



Introduction to the Issues Papers

Enhancing Human Rights Protections in the Security Sector in the Asia Pacific

Enhancing Human Rights Protections in the Context of Law Enforcement and Security in Nepal and Sri Lanka



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This document was authored in 2015 by Professor Danielle Celermajer, University of Sydney for the project Enhancing Human Rights Protections in the Security Sector in the Asia Pacific. This project was run in partnership with the Centre for the Study of Human Rights at the University of Colombo and the Kathmandu School of Law. It may not be produced, in whole or part, without the explicit permission of the author. The EHRP was carried out by a large team of researchers and project managers, all of whom made important contributions to the material presented here. While the researchers have not been named as authors on the particular Issues Papers, their contribution was critical to the work that is presented in them. Those people are: Kaushalya Ariyaratna, Danielle Celermajer, Aastha Dahal, Paula Gleeson, Kiran Grewal, Rohit Karki, Vidura Munasinghe, Anna Noonan and Pradeep Pathak.

INTRODUCTION TO THE ISSUES PAPERS

This document provides an introduction to a series of *Issues Papers* prepared for the *Enhancing Human Rights Protections in the Security Sector in the Asia Pacific* project (EHRP). The *Issues Papers* are intended to provide individuals and organisations that are interested in human rights and security sectors with information about the work we conducted under the project. Their principal purpose is to share these experiences and findings so that others will be better placed to assess, transform, refine and sharpen their own prevention strategies.

Combined, the *Issues Papers* set out the project's research findings as well as describing the approach to strengthening human rights in the security sector it developed.

More specifically, they:

- Set out the project's major research findings on the root causes of the use of torture;
- Discuss how research on organisational, cultural and normative change can assist in addressing human rights violations in security organisations;
- Explain our Theory of Change and the intervention that we developed as a result of this theory;
- Describe the work that we did with security and law enforcement organisations and personnel in Nepal and Sri Lanka;
- Reflect upon the project in terms of the challenges and possibilities for future prevention work; and
- Provide other stakeholders in the field, including representatives of military and police organisations, human rights organisations, scholars and funding bodies, with research, resources and ideas for future project development.

Issues Papers one through six were originally released simultaneously with the staging of an International Conference: *Enhancing Human Rights Protections in the Security Sector in the Asia Pacific*. Their aim was to stimulate discussion at, and reflection after, the conference, and encourage others to share their experiences in developing prevention strategies and working on human rights issues in security sectors. The final set of *Issues Papers* have been written taking into account some of the responses from the conference, as well as documenting the final stages of the project.

We hope that the experimental nature of this project will demonstrate the importance of testing our assumptions about the way we do things in the human rights field and will encourage others both to experiment and to share what they know and learn more broadly across the sector. We also hope that the responses that readers have to these *Issues Papers* will provide useful feedback in the preparation of our final report and eventual publications.

ABOUT THIS INTRODUCTION AND THE ISSUES PAPER SERIES

This *Introduction* provides an overview of the *Enhancing Human Rights Protections in the Security Sector in the Asia Pacific* project and outlines some of the general issues concerning the project's objectives, scope, focus, approach, language and organisation. In doing so, it lays the foundation for more specific topics to be discussed in the subsequent *Issues Papers*. It also provides an outline of the contents and themes of all of the *Issues Papers* to guide readers in navigating the material in the series.

This *Issues Paper* series forms part of a collection of resources that may also be of interest:

- *Project Overview: Enhancing Human Rights Protections in the Security Sector in the Asia Pacific*
A short paper providing an overview of all aspects of the project summarising our principal research findings, our conceptual framework and the development of our intervention.
- *International Review: Current Approaches to Human Rights Training in the Law Enforcement and Security Sectors*
A comprehensive and critical analysis of the training resources on human rights and torture prevention for police and military that have been developed and delivered internationally. On the basis of extensive research on existing trainings, this report sets out a number of principles to guide the development and delivery of more effective training resources.
- *Preventing Human Rights Violations: A How-To Guide on Delivering a Prevention Program*
A manual for Non-Government Organisations (NGOs), funding bodies and security sector organisations interested in developing their own prevention project drawing on the lessons learned from this project. It takes readers through the process of research, developing a Theory of Change, intervention, relationship building, workshops and resources development, and evaluation.

ABOUT THE ENHANCING HUMAN RIGHTS PROTECTIONS IN THE SECURITY SECTOR IN THE ASIA PACIFIC PROJECT

Objectives and Overview

The *Enhancing Human Rights Protections in the Security Sector in the Asia Pacific* project forms the basis of these *Issues Papers* and other reports. It is a three-year, multi-partner project, whose principal objective has been to identify and test strategies that can effectively build the capacity of security sector personnel to address and resist human rights violations in their own organisations. The project's particular thematic focus has been the use of torture, and its geographic focus has been Nepal and Sri Lanka. The project commenced in January 2012 and concluded in early 2015.

The *Enhancing Human Rights Protections in the Security Sector in the Asia Pacific* project has been coordinated by three organisations with a history of working on human rights in the region – the University of Sydney Human Rights Program, the Centre for the Study of Human Rights at the University of Colombo and the Kathmandu School of Law. Project members work in close cooperation with the Nepal Police, the Armed Police Force in Nepal and the police and armed forces in Sri Lanka.

This project involved four key phases:

- (i) Research into the root causes of the torture and into effective methods for organisational, normative and cultural change;
- (ii) Designing an intervention based on the research findings;
- (iii) Piloting that intervention in cooperation with specific security sector organisations in Sri Lanka and Nepal; and
- (iv) Evaluating our actions.

In order to conduct this research, the three partners established research teams in Sri Lanka and Nepal, as well as a team of international researchers from different disciplinary and professional backgrounds. As discussed in *Issues Papers* 3 and 4 on Sri Lanka and Nepal, with the cooperation of the security organisations with which we have been working and a range of civil society organisations, we were also able to conduct empirical research in both countries.

The Research Questions

In simple terms, we can think of this project as being organised around two principal questions:

- What are the roots causes of the use of torture in security organisations?
- How can we draw on this understanding of root causes to prevent the use of torture in security organisations?

Commencing with the first question, our research led us to conclude the causes of torture operate at a number of levels. Combined, these levels can be thought of as a 'system' that produces or creates risks of the use of torture. Within this overall system are individual level factors: the structures and processes of security sector organisations; the characteristics and operation of the criminal justice system; cultural and community norms and attitudes; and political and ideological factors. The factors operating at different levels interact and in many ways reinforce each other. Our research identified some common patterns or generic root causes and risk factors but also found that the particular constellation of root causes will differ according to the particular context.

The implication of these research findings for our second question has been, in the broadest terms, that to be effective, interventions cannot simply be aimed at reforming individuals. Given that our project was organised around the objective of building the capacity of security personnel to resist and prevent the use of torture, this was an important finding. To effectively address the root causes of torture, the object of reform has to be the *overall system* or at least *specific and strategically chosen parts* of that system. What this means is that activities designed to build the capacity of individuals will be most effective if that capacity involves increasing their ability to bring about systematic change.

In this project, we did not seek to bring about change at all levels of the system noted above. Our focus has been on the ways in which security organisations can be reformed so that they develop stronger resistance against the use of torture and reduce risks of its occurring.

Working through the capacity building lens, our approach has been to work with security personnel to support them to work out how to transform the system so that it does not normalise, incentivise, facilitate, permit or legitimise torture. How this project operationalised this general approach of building the capacity of security sector personnel to address and prevent the use of torture by addressing risk factors in their own workplace is discussed in detail in *Issues Paper 6: From Structural Analysis to Structural Intervention*.

Why focus on torture? Scope and significance

We chose to focus specifically on torture because, as we discuss below, this practice remains endemic in security organisations throughout the world. Despite extensive efforts, it has been resistant to many prevention strategies developed by both local and international human rights actors and organisations. At the same time, the benefits of conducting this type of action-research project on human rights in the security sector reach beyond working out how we might better address this specific violation.¹ Understanding the root causes of the use of torture and mechanisms for effective prevention provides us with a window into a range of broader issues concerning the dynamics of human rights violations and strategies for prevention. Moreover, the project design allows us to test a model in which actors from different disciplines, organisational spheres and sectors collaborate to produce a richer understanding of a particular human rights problem and together develop more comprehensive strategies to address it. This project has combined a number of components: empirical and multi-disciplinary research; project design drawing on this research; piloting and testing the proposed approach that emerges from this research in collaboration with security forces; and evaluation. One of the purposes of this report is to provide readers with an understanding of each of these components and how they combined to form the overall project approach.

Why Nepal and Sri Lanka?

Our decision to work in Nepal and Sri Lanka was based on several considerations:

- First, the project partners had established relationships of cooperation and trust with law enforcement and security organisations in these two countries. Projects that deal with contentious issues such as human rights in the security sector and that involve partnerships between civil society and security or law enforcement agencies, will largely stand or fall on the strength of those relationships and on the capacity and willingness of the partners to productively work through their differences. As discussed in the *Issues Papers* series, the process of strengthening, and at times testing, the limits of these relationships and the question of how human rights organisations and security sectors can work together with a 'creative tension' are themselves important subjects of reflection.
- Second, both of these countries are now emerging from serious and long standing civil conflicts and have publicly committed to re-establishing democracy and the rule of law. Research indicates that transitional and post conflict periods during which states are in the process of democratisation provide opportunities for achieving outcomes with respect to human rights protection that might not otherwise be available.² As such, this period represents a sensible time to be seeking creative avenues for change in Nepal and Sri Lanka.
- Third, for a considerable time, NGOs and international organisations have been reporting on the incidence of torture in Nepal and Sri Lanka. This has in turn raised the concern of, and responses from, the international community.

¹ Action research combines research with a real life problem solving activity. The research thus both feeds into the way in which strategies are developed and is fed by the experience of testing an approach. In general and in this case, action research involves collaboration between communities of practice and reflexivity on the part of all those involved.

² Emilie Hafner-Burton and James Ron, "Seeing double: Human rights impact through qualitative and quantitative eyes," *World Politics* 61, no. 2 (2009): 360-401.

The importance of language: how do we speak about 'torture' and institutional violence?

One of the important questions that arose throughout this project concerned the language that we should use to describe the class of acts that we are seeking to prevent. Options canvassed included 'torture', 'torture and other forms of cruel, inhuman and degrading treatment and punishment' (as used in the UN Convention) or 'the improper use of force'. Throughout the early parts of the development of the project, the term we chose was 'the improper use of force'. However, after important discussions at the International Conference held in Bangkok in September 2014, it was decided that the word 'torture', standing in for the full range of acts set out in the UN Convention, should be used in all documentation and when discussing the project.

The original choice to use the term 'the improper use of force' had been made for several reasons, but also with a realisation of the problems involved in this choice. In our work with police and military personnel, we found that there was a general agreement that 'torture, cruel, inhuman or degrading treatment or punishment' (especially when referred to simply as 'torture') was wrong and should not be permitted. Where the disagreement lay was with the question of which *types* of acts constituted torture, cruel, inhuman or degrading treatment or punishment and as such with what lay on the other side of the red line of unacceptable behaviour. As such, by initially using the term 'the improper use of force', we wanted to signal that the *question* of what types or uses of force are 'improper' needed to be a subject for explicit reflection by security personnel themselves as part of the project. This did not mean that we considered that the definition of what constitutes the improper use of force is purely subjective. It rather indicated that in this project, we thought it important to recognise that for any organisational change strategy to be effective, it needed to include a robust and honest engagement with security personnel themselves about the class of impermissible acts and why they are impermissible.

Clearly, there are some acts, waterboarding or the use of electric shocks, for example, where there will be virtual universal agreement that they constitute torture and contravene international laws that most countries have agreed to observe. Even then there will be people both within and outside the security sector who would openly argue that such acts are justified under certain circumstances and/or who would promote the use of such extreme forms of torture in closed settings even while concealing their use from the public. It is critically important that these acts be addressed and that those seeking to protect human rights take on such justifications and expose the hidden use of torture, but it was not this spectrum of the work that was the focus of this project. In our research we found that it was not at this 'sharp' end of the spectrum that the most widespread or systematic violations occur. On the contrary, our research indicated that alongside this more acute form of torture, which often attracts the greatest attention and approbation, there exists a far more routinised, normalised and widespread practice of violence and ill treatment in many security organisations. This behaviour forms a significant part of the spectrum. It does not only occur under particular political conditions (e.g. authoritarian regimes) and is not limited to specialist 'torture' units. Indeed, it may constitute part of the regularised practice of certain security organisations. For many in the security sector, such acts are not considered 'torture'. We therefore felt that by using the term *the improper use of force* we would be signalling that we were interested in the full spectrum of wrongful acts and not only those at the most acute end. Using this terminology would make it clear that we were not only, or not primarily, focused on the most extreme acts (about which there would be near universal agreement that we are talking about torture).

Finally, particularly in the Sri Lankan context, using the word 'torture' often acted as a conversation stopper when trying to work with security organisations. As our intervention depended on the development of trusting relationships, it was important to be mindful of the effect of language on those relationships. Using the word torture posed the problem of security personnel immediately suspecting that the project team was taking an accusatory position and thus going onto the defensive.

At the same time, from the outset, we were aware that not using the word 'torture' was highly problematic. Not calling the use of force and violence against people in detention torture always risks the danger of minimising the gravity of the acts. This is especially the case because the use of euphemisms to describe torture has itself been one of the main strategies to normalise such acts and obscure or disguise what is actually at issue. As such, not using the word torture to describe violence and the use of force in conditions of detention risks being confused with such euphemistic strategies, if not replicating them. In this sense, a choice that is made for strategic reasons can be interpreted as a form of complicity. The arguments in favour of using the term torture were made during the International Conference and it was on the basis of these discussions that the decision was made to use the term torture in all publications and discussions about the project. At the same time, we hope that this discussion will provoke reflection on the complex implications of the language that we use when talking about human rights and the way in which the words that are chosen can effect the interactions between civil society groups and security organisations.

ORGANISATION OF THE ISSUES PAPERS

A summary of each *Issues Paper* in the series is provided below.

Issues Paper 1: International Legal Frameworks and Existing Approaches to Preventing Torture

This first *Issues Paper* is intended to provide some background to the specific project. Chapter One looks at the international legal framework that has been established to deal with the class of acts that we are concerned with here. It sets out basic definitions of torture, sanctions against it and the scope of the problem both internationally and in the Asia Pacific, in particular using the framing of international law. In Chapter Two, this *Issues Paper* examines the main approaches that have been adopted in the last forty years to address the use of torture. In particular it examines which Theory of Change underpins these approaches and what we know about how well they work.

Issues Paper 2: Exploring the Root Causes of Torture

This second *Issues Paper* discusses the findings of our research on the root causes of the use of torture. Methodologically, we conducted this research in two ways. First, a team of experts examined the root causes of torture or institutional violence from a range of disciplinary perspectives, including political science, public health, psychology, criminology, sociology and anthropology. Second, our teams of country-based researchers conducted primary empirical research in both Sri Lanka and Nepal, speaking with a range of government and civil society actors as well as with members of the security forces about how they understood the problem of torture, the position and experience of security personnel and their perception and understanding of human rights in relation to security work.

Chapter One presents the research on institutional violence. It points to the large body of research indicating that systematic violence is best understood in terms of situational factors, rather than as the outcome of individual pathologies. Here we look in particular at the relevance of obedience and conformity, the types of conditions that produce torture and the processes of moral disengagement that allow for it to be normalised. Chapter Two establishes our multi-dimensional understanding of the root causes of the use of torture and discusses the different spheres (individual, organisational, community, legal, political, cultural and ideological) implicated in the production of torture. This chapter then presents the ecological or systems approach that the research on situational violence suggests and that we adopted as the theoretical framework for the project. Chapter Three returns to our research on root causes, specifically examining the organisational and cultural factors in police and military organisations that create risks for the use of torture. It distinguishes three different dimensions of organisational factors – processes, structures and cultures – and presents the research on how factors operating on each of these dimensions can create opportunities and incentives to use torture or can legitimise, authorise and normalise this. In this chapter we also begin to break down that oft used but opaque term ‘culture’ (policing culture, military culture) so that we can get a handle on how, where and why the use of torture is perpetuated and where interventions seeking to prevent it should be directed.

Issues Papers 3 and 4: Human Rights in the Sri Lankan Law Enforcement and Security Sector and Human Rights in the Nepali Law Enforcement and Security Sector

In *Issues Paper 3* and *Issues Paper 4*, we move from the general to the country specific, presenting what our researchers and others have found about the specific situational factors in Sri Lanka and Nepal. Drawing on our own interview data and on secondary literature, we seek to present a picture of the conditions under which the use of torture may become systematic in the particular contexts of South Asia. In *Issues Paper 4* on Nepal, we also draw on research conducted in other contexts, principally in India, to enrich our findings. A separate *Issues Paper* (9) discussed below is dedicated to describing detailed research on one district in Sri Lanka that was conducted at the end of the overall project.

Issues Paper 5: Organisational and Normative Change in the Security Sector

In the fifth *Issues Paper* we move from the research concerning root causes to the research on strategies for effecting change. We begin, in Chapter One, with a discussion of our research on strategies to effect organisational and cultural change. Drawing on literature directly concerned with changing security organisations, and broader literatures on transforming organisational norms and practices as well as deep-rooted behaviours and attitudes, we suggest a number of principles and approaches that might be usefully taken up to transform the cultures of security organisations. In Chapter Two, we turn to the cognate area of public health to examine the research on prevention strategies developed in this field. We look at the results of meta-evaluations of projects indicating the key components of successful prevention, discuss the importance of understanding the particular characteristics of the target group and its readiness to change and examine a number of approaches to effecting normative and attitudinal change. Chapter Three then comes back to Nepal and Sri Lanka to discuss the critically important process of enrolling and building relations with the organisations in which change is being sought. Here we discuss how we went about developing those relationships and some of the challenges that we faced in doing so, as well as the design we settled upon for working with *Human Rights Protection Facilitators* (HRPFs) on the inside of the organisations.

Issues Paper 6: From Structural Analysis to Structural Intervention

This sixth *Issues Paper* turns from the research to the design and implementation of our intervention. Chapter One commences with an explanation of how we moved from the research results to developing the Theory of Change that became the foundation for our intervention. It then sets out the basic intervention design. Chapter Two then describes in detail the transition from the design of our prevention approach to its actual implementation. Here we focus in particular on the process of working with the HRPFs to identify organisational risk factors and to design projects that address those factors, our workshop designs and the ongoing capacity building the project team and the HRPFs did together.

Issues Paper 7: Case Studies from Nepal and Sri Lanka: Human Rights Protection Facilitator Projects

The seventh *Issues Paper* sets out the actual projects that the HRPFs developed. Chapter One discusses in more detail the process that the HRPFs used for developing their projects and how they came to identify the problem they would work on as well as the results they wished to achieve and the actions they needed to take to achieve those results. Chapter Two describes the actual projects, setting out all of the projects in brief and then showcasing some illustrative processes. While *Issues Paper 8* is dedicated to evaluation, in the final part of this *Issues Paper* we also reflect on some of the strengths and weaknesses of the projects and the approach to working from the inside with security personnel themselves taking the lead in this manner.

Issues Paper 8: Measuring Change: Evaluating a Torture Prevention Project

One of the significant challenges for any project seeking to contribute to the prevention of a serious and complex human rights violation is evaluating its impact. As such, *Issues Paper 8* is dedicated to the question of evaluation. Chapter One discusses some of the literature and general approaches to evaluation in the human rights field and the difficulties and importance of developing evaluation methods that will assist in drawing as many lessons as possible from projects. Chapter Two discusses how we planned our evaluation processes and the need for a multi-layered evaluation capable of addressing the different components of the project. Chapter Three presents some of the findings for evaluating the research we conducted, the intervention we developed and how well we achieved our results and objectives.

Issues Paper 9: Human Rights in the Sri Lankan Law Enforcement Sector – Puttalam District

Although the principal purpose of conducting research in the EHRP was to develop an intervention design, at the end of the project we conducted in-depth research into the situation concerning policing in one district in Sri Lanka. We did this because our work during the project had made it clear that the best possible intervention designs would be based on a very detailed understanding of a particular context, the human rights problems, the different stakeholders and the way in which different sectors in that area understood the problem and their capacity to develop solutions. In Sri Lanka we were given permission to conduct in depth research, including with police in one district in the North West, Puttalam. This *Issues Paper* sets out this research, discussing in depth our findings about the contextual factors and the dynamics of violence.

Conference Report: Human Rights and the Security Sector in the Asia Pacific

In addition to the *Issues Papers*, we also produced a report on the International Conference. Chapter One of the Conference Report contextualises the conference in the overall EHRP and sets out its objectives. Chapter Two describes the process for planning the Conference and how we went about ensuring the involvement of a range of stakeholders. Chapter Three describes the way in which we organised the actual conference agenda and activities, describing the key themes, the questions we chose as the basis for the conference discussions and the formats we adopted. Chapter Four provides a detailed summary of the conference sessions and discussions including selected excerpts from the presentations. Chapter Five and Appendix C look in some detail at the conflicts and controversy surrounding the conference. Finally, in Chapter Six we reflect on some lessons that emerged from the Conference, drawing on the reflections of conference participants.

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